

recessed until 10 o'clock a. m. tomorrow, September 5, 1917.)

In the Senate.

(President Pro Tem. Dean in the Chair.)

Adjournment.

At 5:10 o'clock p. m. the Senate on motion of Senator Dayton adjourned until 9:30 o'clock tomorrow morning.

FOURTH DAY.

Senate Chamber,
Austin, Texas,
Tuesday, September 5, 1917.

The Senate met at 9:30 o'clock a. m. pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

Alderdice.	Hopkins.
Bailey.	Hudspeth.
Bee.	Johnson of Hall.
Buchanan of Bell.	Johnston of Harris.
Buchanan of Scurry.	Lattimore.
Caldwell.	McCollum.
Clark.	McNealus.
Collins.	Page.
Dayton.	Parr.
Dean.	Robbins.
Decherd.	Smith.
Floyd.	Strickland.
Gibson.	Suiter.
Harley.	Westbrook.
Henderson.	Woodward.

Absent—Excused.

Hall.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Excused.

Senator Hall, for yesterday and today on account of important business on motion of Senator Smith.

Message From the Governor.

Mr. S. Raymond Brooks here appeared with a message from the Governor, which the Chair laid before the Senate as follows, to wit:

Governor's Office,
Austin, Texas, Sept. 5, 1917.

To the Thirty-fifth Legislature in Third Called Session:

I beg to submit for your consideration the following subject: Amendment of Article 303, Revised Penal Code of 1911, providing that this Act shall not apply to the sale of gasoline or motor oils or accessories on Sunday.

Respectfully submitted,
W. P. HOBBY,
Acting Governor of Texas.

Morning call concluded.

At Ease.

At 9:40 o'clock a. m. Senator Gibson moved that the Senate stand at ease for fifteen minutes.

The motion prevailed.

In the Senate.

President Pro Tem. Dean, in the chair.

Committee Assignments.

The Chair announced the appointment of Senator Collins to fill the vacancy of Senator King on the following standing committees:

Civil Jurisprudence, Criminal Jurisprudence, Judicial Districts, Mining, Irrigation and Drainage, Public Lands and Land Office, Towns and City Corporations.

The Senate as Court of Impeachment.

The Chair announced that the hour, 10 o'clock a. m., to which the Court had recessed had now arrived, and directed the Sergeant-at-Arms to announce that the Court is now open for the continuation of the trial of Governor James E. Ferguson.

PROCEEDINGS.

Wednesday, September 5, 1917.

Morning Session.

Senate Chamber, Austin, Texas.

(Pursuant to adjournment, the Senate, sitting as a High Court of Impeachment, reconvened at 10:00 o'clock a. m.)

Honorable W. L. Dean, President Pro Tempore, presiding.

The Board of Managers and their counsel were present.

The Respondent and his counsel were present.

The Chair: The hour having arrived for the convening of the Court of Impeachment, the Sergeant-at-Arms will give notice that the Senate is now meeting as a Court of Impeachment.

Sergeant-at-Arms (at the door of the Senate): 'Oyez! Oyez! Oyez! Oyez! The Senate sitting as a Court of Impeachment is now in session.

The Chair: Now, all who are not entitled to seats within the bar will please retire outside of the bar and remain outside while the Court is in session. (To General Crane): General, are you ready to proceed?

General Crane: Yes, Mr. President.

The Chair: General Crane.

General Crane: In addition to Mr. Fox's testimony—while he was on the stand he made a statement that the balance kept in the bank, which he denominated a satisfactory balance, was \$67,000, the average daily balance; but finding that he made a mistake, it is agreed that he may correct it as follows: "In reply to a question asked me as to the average daily balance maintained by the Temple State Bank with the Houston National Exchange Bank from March 8 to April 3, 1917, inclusive, I answered that the average balance for March was \$67,000, whereas I should have stated that it was \$78,100 between the above mentioned dates."

Mr. Hanger: Mr. Fox desired to go away last night and made the statement in writing, and it is accepted by both sides as a true correction. Now, Mr. President—?

The Chair: Mr. Hanger.

Mr. Hanger: In view of the controversy which arose on yesterday—or, rather, the discussion which arose, rather than controversy—and in view further of the statement made

by myself about the Whitley Cotton Company note yesterday afternoon, we requested the Governor to look for the statement rendered him by the bank; it was not in his office and not in his papers, and he had searched for it before. Last night he found it at home. We desire to tender that to counsel for the House Managers, and beg to be permitted to say that it is probable—in view of the statement made yesterday by myself, it ought to be said now that that statement made yesterday was probably partially, and was partially incorrect, that the misunderstanding arose over exorbitant interest charges, that that charge does not amount to as much as \$11,000, but only about \$8,600 difference.

General Crane: Well, we would be glad to put this in.

Mr. Hanger: Yes, sir, that is the statement made by the bank, General; it was among some papers that were mislaid at the house.

General Crane: We want to recall Mr. Blum, Mr. President, just a moment. Call Mr. Blum, Mr. Sergeant-at-Arms.

The Chair: Before we proceed further I would like to admonish the visitors, as well as the members of this Court and the officers of the Senate and the employees that those who remain within the chamber will be expected to keep order; this is not a place to engage in conversation, and the visitors and employees of the Senate who have the privileges of the chamber, if you remain in here, please do not disturb those engaged in the trial by having conversations. I think all that you need in that connection is to have your attention called to it. I believe that if any do engage in conversation, it will be thoughtlessly done. I know that the visitors here and those who are members and employees, or officers and employees of the Senate, will not wish to detract in any way from the trial now in progress, and I hope that we may not have to admonish you further, but that every one will do his utmost to preserve perfect order. Now, General Crane, are you ready?

General Crane: Yes, sir.

Thereupon the proponents recalled

H. F. BLUM,

who, in answer to questions propounded, further testified as follows, to wit:

Re-direct Examination.
By General Crane.

Q. Mr. Blum, let me have the bank statement of Governor Ferguson's account there—his account as Governor, just one moment. (Taking paper.) Mr. Blum, I note that on the 23rd day of August, 1915, in the Governor's account, the date that the \$5,600 was paid, about which you have been interrogated heretofore, that the word "balance" is stamped on the face of the Governor's account. What does that indicate?

A. It indicates that the statement has been rendered and the book has been balanced on that account.

Q. It states then, in other words, that the Governor's book was either balanced on that 23rd day of August or else that statement covering that item was rendered him on that date, doesn't it?

A. It means that either—he did not carry a book; that statement was mailed to his secretary on that date, that is what it is.

Q. Well, now, you have stated that once or twice before. Do you know that the statement was mailed to the secretary or mailed to him?

A. I know to my certain knowledge that all the Governor's statements were mailed to the Governor's secretary, yes, sir.

Q. Although he asked that the statements be sent to him?

A. That is exactly right, yes, sir.

Q. Yes. All right. Well, that statement was mailed on that day, anyway. Have you copies of those letters sending those statements?

A. There were not any letters written, General—just the statements put in envelopes and sent down.

Q. Did you do that yourself?

A. The bookkeeper usually did it; sometimes I helped.

Q. Now, do you know of the mailing of that particular statement on that day, Mr. Blum?

A. I do not, no, sir.

Q. Now, do you mean to state from memory that that particular statement was mailed to him on the 23rd of August?

A. No more than the record shows; I don't know of any account—

Q. Well, the record just shows

a statement of the balance was sent him?

A. That is all, yes, sir.

Q. Now, do you mean to state from memory that that statement was sent to his secretary or to him, or do you want to state that as a conclusion or opinion? You have no memory about it, have you?

A. That is all, except the record, General.

Q. All right, that is all. Now, then, I find again on February 3, 1916—no, March 7, 1916—I don't know, what is that date, please, the next balance? (Handing paper to witness.)

A. (Referring to paper.) March 7, 1916.

Q. March 7, 1916, another statement was mailed to him, wasn't it?

A. That is correct.

General Crane: Mr. President, will you indulge us just a moment, if you please?

The Chair: Yes, sir.

Q. Now, I believe you stated yesterday that there was no statement in the books of the bank as to the application of this \$150,000 showing that settlement and what was included in it?

A. I said that there was none that I knew of, no, sir.

Q. Well, now, isn't this the statement that you gave Governor Ferguson—that the bank gave him, as to that settlement? (Handing paper to witness.)

A. This appears to be a statement of that account all right, yes, sir—or that settlement, rather, General.

Q. Statement of that settlement, showing the items included, the application of the entire \$150,000, doesn't it?

A. It appears to.

Q. Yes.

General Crane: We will read this into the record, Mr. President, as a part of this witness' testimony. (Reading:) "James E. Ferguson"—

Mr. Hanger (interrupting): Now, a good many members of the Court that are here now were not here before. Let it be shown, we ask, for the benefit of those who were not here when we made the statement, that this statement was furnished by us.

General Crane: Oh, certainly, certainly.

Mr. Hanger: To General Crane?

General Crane: Yes, sir.)
Mr. Hanger: Let it go into the record.

General Crane: This statement has been furnished by Governor Ferguson, it is true. (Reading): "James E. Ferguson. Statement of account with the Temple State Bank, Temple, Texas, for the month of"—

General Crane: Date not given. One note, No. 7655, \$30,000. Marked opposite in pencil, compounded. Accrued interest on same, \$6380.

Note No. 9900, \$25,000. Accrued interest on same, \$324.46.

Mr. Hanger: General, excuse me, doesn't it show the dates of the notes?

General Crane: No, no, it doesn't.

Mr. Hanger: All right, I beg your pardon.

General Crane: No dates on there.

Mr. Hanger: All right.

General Crane (resuming reading):

"Note No. 9901, \$25,000; accrued interest on same \$324.46.

"Note No. 9902, \$10,000.

"Note No. 9912, \$5000; accrued interest on same, \$77.77.

"Note No. 9940; accrued interest on same, \$130.90."

Mr. Manager Bryan: General, excuse me, what is the principal of that note?

General Crane: The last note?

Mr. Manager Bryan: Yes, sir.

General Crane: \$10,570. Didn't I read that?

Mr. Manager Bryan: No, sir.

General Crane: All right, I am glad you called my attention to it. Making a total, as I figure here, of his personal indebtedness of \$112,807.59.

The Bell-Bosque Farm:

"Note No. 9750, \$20,000; accrued interest on same, \$809.

"Note No. 9751, \$10,000; accrued interest on same, \$404.45.

"Note No. 9752, \$1400; accrued interest on same, \$46.67.

"Credit on J. E. Love note, \$1693.

"On your note to the Whitley Cotton Company, \$3029.29.

"Making a total of \$150,190."

The credits, then, are as follows:

"Credit by one note signed by Alvah F. Ferguson, \$37,500."

"One note signed by James E. Ferguson, \$37,500.

"One note signed by Bell-Bosque Stock Farm, \$37,500.

"One note signed by J. H. Davis, Jr., \$37,500.

"Refund interest on note No. 9902, \$190."

Perhaps we had better offer this in evidence

Mr. Hanger: Yes. It is read in the record, he wants to keep that, of course.

General Crane: Well, perhaps we had better return it.

Mr. Hanger: Well, it is read in the record.

Mr. Henry: Have a copy of it made and give them the copy.

General Crane: That is all right, just make a copy of it, that will be perfectly satisfactory.

Q. Did I ask you for some additional information?

Mr. Hanger: Only about figuring the interest on notes.

A. You asked me to show you the original records in this case?

Q. Yes, yes. Well, we will let that alone, we have got that, that is all right—yes, we have that since the statement furnished this morning.

The Chair: Does Counsel for the Respondent desire to ask any questions?

Mr. Hanger: Yes, sir, a few questions.

Recross Examination

By Mr. Hanger.

Q. Have you a sheet of paper there?

A. Yes, sir.

Q. Figure up these amounts: \$30,000; \$25,000; \$25,000; \$10,000; \$5000; \$10,570. I didn't make that amount the same as the General did, and I want you to figure it up—add it there with a pencil and see what it is.

Mr. Hanger (To Counsel for the Managers): You said \$112,000, General; I make it \$105,000.

General Crane: I was reading the figures.

Mr. Hanger: Oh, yes, that is interest and all.

General Crane: I didn't make any calculation at all.

Mr. Hanger: I see I see.

A. This is \$105,570.

Q. \$105,570? Mr. Blum, did you—you did not know that this had been found?

A. No, sir.

Q. —until the General exhibited it

A. That is practically what I was looking for.

Q. Yes? Did you figure the interest last night, as requested, proper to be charged against the Governor on these notes and on the Bell-Bosque Stock Farm?

A. Well, I figured some of that interest, yes, sir.

Q. Did you figure it all?

A. Yes, sir, I figured it all I believe, I took the notes and for my own information I figured every one of them.

Q. Well, have you a statement of it?

A. No, I don't believe I have got one with me at all.

Q. Well, do you remember what the total amount of interest was that you figured on these notes?

A. It was, if I remember correctly, \$6,300 and some odd—dollars—sixty-three hundred odd.

Q. On all of them put together?

A. Yes.

Q. You did not compound the interest?

A. No, sir, I did not.

Q. You figured straight interest on the notes?

A. Yes, sir.

Q. You did not in any—on any of the notes figure interest on interest?

A. No, sir, I did not.

Q. Now, sixty-three hundred and how much?

A. I don't remember that, it is just from memory.

Q. All right. \$6,300. That did not mean on the first note only, but on all the notes?

A. It means on all the notes, yes, sir.

Q. What is the total amount of the principal here?

A. \$105,570.

Q. Yes? Then, the \$30,000—\$31,400 would make \$136,970?

A. Figuring \$31,400?

Q. That is the Bell-Bosque Stock Farm?

A. \$136,970.

Q. Add \$6,300 to that and see what it is—what does that make?

A. \$143,270.

Q. What—do you know or are you familiar with this J. E. Love note transaction?

A. No, sir, I am not.

Q. You do not know by what right the bank claimed to charge that against the Governor?

A. No, none whatever.

Q. Did you see anything in that letter of instruction about the settlement authorizing the embracing of the J. E. Love note in that settlement?

A. I did not, no, sir.

Q. You do not know why that was put in?

A. No, sir, I do not.

Q. Have you got a record there of that \$8,600 note which took up the Whitley Cotton Company note?

A. I think so, yes, sir.

Q. Dated June 1st, isn't it, long after March 3d and 7th?

A. Dated June 1, 1917, yes, sir.

Q. Yes, sir. That is all.

Redirect Examination By General Crane.

Q. On what basis did you figure interest?

A. What is the question?

Q. On what basis or rate did you figure the interest?

A. Eight per cent.

Q. Eight per cent?

A. Yes, sir.

Q. Don't you know those notes of yours bear a greater rate of interest than that if not paid at maturity?

A. I believe, General, our notes are all printed with that blank to be inserted, the rate to be inserted.

Q. The rate to be inserted?

A. Yes.

Q. Those calculations were all made there in the bank, weren't they?

A. So far as I know.

Q. Well, there was no complaint about the settlement at the time it was made, was there?

A. Well, I don't know about that, General.

Q. The statement was furnished Governor Ferguson immediately on the settlement, wasn't it?

A. That statement you produced there seems to have been furnished the Governor. This is the first time I had seen it, however.

Q. Yes. Well, that is all.

Mr. Hanger: That is all, Mr. Blum. (Witness excused.)

General Crane: Call Mr. Dunn, please.

Thereupon, the Proponents called,

DeWITT C. DUNN,

who had been previously sworn by the Chair, under the rule, and who now in answer to questions propounded, testified as follows, to wit:

Direct Examination
By General Crane.

Q. Were you sworn with the other witnesses?

A. Yes, sir.

Q. Now, speak out, Mr. Dunn, so these gentlemen all around can hear over here, please, because that is the purpose of the inquiry, so as to give them the information that you have?

A. All right, sir.

Q. You are Cashier of the Union National Bank of Houston?

A. Yes, sir.

Q. How long have you occupied that position?

A. About eleven years.

Q. Did your bank at any time open an account with the Penitentiary System of Texas?

A. Yes, sir.

Q. What time?

A. The latter part of December, 1915.

Q. In what way did they make a deposit with you?

A. They made a deposit of some \$27,000 with us.

Q. On what precise date, you say?

A. (Referring to records). The latter part of December—I can give you the date.

Q. Of what year?

A. 1915 (referring to paper). December 22, 1915.

Q. A deposit of how much?

A. Twenty-seven thousand two hundred fifty-three dollars and thirteen cents.

Q. Now, will you be good enough to give the amounts of the deposits from then on? How long did the account continue?

A. It still continues.

Q. It still continues? Are they many or a few items?

A. Many.

Q. What was the aggregate amount of the deposits of the Penitentiary System, put in your bank—can you foot that up in just a moment?

A. I have it already footed. (Referring to a paper.) \$921,721.60.

Q. During the period they have been doing business with you?

A. Yes, sir.

Q. How long since the last deposit was made?

A. (Referring to records.) July 19th.

Q. What was the amount of that?

A. Forty-five dollars.

Q. What is the average daily balance, have you that, can you approximate them there?

A. Well, I have them here, each day's balance from the beginning.

Q. I know, but are they regular? What was the first?

A. Oh, the first one was \$27,000; then, on April 15th, it ran up to \$145,000.

Q. April 15th?

A. Yes, sir.

Q. Of 1916?

A. Of 1916, yes, sir.

Q. Did they keep up high like that for any considerable length of time?

A. No, they gradually reduced down to \$1,200 in July, 1917—\$1,200; then along in December of that year it went up again to \$123,000, gradually.

Q. Yes? Some of these gentlemen did not understand the total of amount of deposits. Will you be good enough to restate that?

A. Nine hundred twenty-one thousand seven hundred twenty-one dollars and sixty cents.

A. Yes? Did the Governor have a personal account with you during this period?

A. No, sir.

Q. Did he owe the bank anything by way of notes or otherwise?

A. Yes, sir, he owed us a note of \$11,000.

Q. Since when?

A. He owed us that—the loan started in 1913, and was paid in June of 1916.

Q. After the Penitentiary account was opened, did he apply for any additional loans of a personal kind?

A. Yes, sir. In the spring of 1916, he asked for a loan.

Q. Of how much?

A. Thirty thousand dollars.

Q. On what collateral, if any?

A. Some—some bonds of the Bastrop Lignite Mine, as I remember it.

Q. Did you make the loan?

A. No, sir.

Q. Was there any unpleasantness growing out of it on his part?

A. No, no unpleasantness particularly; he—he offered us the loan and we didn't particularly care for it, and declined it.

Q. Yes. Did he have another account with you as Governor?

A. Yes, sir.

Q. When did that begin and when

did it end, and what was the amount of it?

A. It was twenty-five hundred dollars, and stayed with us about ten months, as I remember it.

Q. When was it made?

A. That is what I am getting now. (Referring to papers.) May 10, 1915, closed April 12, 1916.

Q. What was that item?

A. I don't know what it was.

Q. You don't know what the funds were or where they came from?

A. No, sir.

Q. How did you get them?

A. In a letter from the Governor.

Q. In a letter from the Governor with a draft or check?

A. Accompanying it was a draft or check for \$2,500 to his credit as Governor.

Q. Now, what was the date of that application for the \$30,000 loan?

A. I will have to refer to his correspondence. (Referring to file of letters.) April 14, 1916.

Q. Yes. You have the correspondence with the Governor there?

A. Yes.

Q. Let me glance at it just a moment. (Witness thereupon handed correspondence file to counsel). Mr. Dunn, is this the letter which you received on April 11, 1916, making that deposit in the Governor's account?

A. This is the letter authorizing—instructing us to remit it. This is the letter withdrawing the deposit, in other words.

Q. Withdrawing the deposit?

A. Yes.

General Crane: We offer this in evidence, to identify the fund.

Senator Hanger: Let me see it, please. (Thereupon the letter was handed to Senator Hanger by General Crane). No objection.

(Thereupon the letter referred to was read into the record by General Crane, as follows):

"April 11th, 1916.

"Mr. DeWitt C. Dunn, Cashier,

"Union National Bank,

"Houston, Texas,

"Dear DeWitt:

"The \$2,500 which I placed with your bank several months ago belonged to the West Texas Normal College Building Fund. As the building is now completed, I am compelled to ask for the money, and will thank you to remit it to the American National

Bank of this city for my credit as Governor.

"Yours truly,

"Jas. E. Ferguson,

"Governor."

General Crane: I think that is all. If there is anything else, why I will ask it later.

Cross Examination

By Senator Hanger.

Q. Mr. Dunn, Governor Ferguson had done business with your institution for many years, had he not?

A. Yes, sir.

Q. When it was the old Union Bank & Trust Company?

A. Yes, sir.

Q. He opened an account with you the first day you began to do business, didn't he?

A. I believe he did.

Q. You had made him many loans?

A. Yes, sir.

Q. When did you begin doing business—the old Union Bank & Trust Company?

A. In 1905, I believe September, 1905.

Q. Since 1905—from 1905 to 1913 you made him many loans?

A. Yes, sir.

Q. This particular loan that they mentioned here, they inquired about, was made in 1913. He was a private citizen, wasn't a candidate for Governor at that time? When was it made in 1913?

A. I haven't got that record.

Q. Haven't the record?

A. No, sir. I was instructed to bring the data just from the 1st of January, 1915.

Q. Well, that's all right; that's all right. He did owe you at times before that as much as twenty, twenty-five and even thirty thousand dollars?

A. Yes, I think he owed us thirty thousand dollars one time.

Q. Before that?

A. Yes, that is my recollection.

Q. Yes. The Penitentiary Commission account started with a note by them to you, didn't it?

A. Well, it started by our agreeing to lend them.

Q. And you did lend them money?

A. We loaned them money.

Q. How much?

A. One hundred and twenty thousand—our limit.

Q. Your limit. That was to assist that Commission, the Prison Commis-

sion, in the crops—in making the crops?

A. Assist them to make their 1916 crops, yes, sir.

Q. The 1916 crop?

A. Yes, sir.

Q. Do you know the date of the loan that you made to the Prison Commission of \$125,000 to so assist in making that crop?

A. Yes, sir.

Q. Give us that date.

A. April 15, 1916.

Q. April 15, 1916. It was represented to you by the Governor at that time that they had to have money in order to raise the crop, wasn't it?

A. Yes, sir.

Q. He made the arrangement—

A. He made the arrangement originally.

Q. —to make this loan to the Prison Commission?

A. Yes, sir.

Q. In order to enable them to carry on the various farming enterprises that they had—the Prison Commission then had?

A. Yes, sir.

Q. It was by virtue, wasn't it, Mr. Dunn, of the personal relation and long standing business relationship between you and the Governor, that the arrangement was made?

A. Yes, sir.

Q. To assist the Prison Commission in its necessity at that time?

A. Yes, sir. I can relate just exactly in detail how it happened, if you like.

Q. Well, I suppose that is not necessary. All right, state it.

A. The Governor was at the Rice Hotel one day and asked me to come down there and see him, and he told me that the Penitentiary, that the Board of Commissioners, had to have some money to make the crop for that year. Its credit was bad, and I knew that, and he wanted to know if there wasn't some way that he could arrange with our bank to lend them some money, and I told him that we would be glad to consider it, and suggested that he have the Board come down and meet with our executive board, and a few days later they came. We were a little afraid to take the account because they could not give us a mortgage on the crops, but we had—we discussed it very fully.

Q. Right there, was the credit of the Prison Commission—of the Pen-

itentiary system of Texas, at that time good or bad?

A. Well, we did not consider it very good.

Q. Go ahead.

A. In fact, we were not anxious for the loan.

Q. All right. Go ahead with the negotiations.

A. So we found out we couldn't take any mortgage on the crops, and it was suggested by the Governor that he, as Governor, and the Commissioners each give us letters assuring us that we would be paid out of the proceeds of the first crops sold that fall; and it was on the strength of those letters that we consented to make them the loan.

Q. Now, you said that there was a total of \$921,721.60 deposited altogether there?

A. Yes, sir.

Q. That means that adding together all the items that have been put into your bank since the opening of that account in 1915 down to this date aggregates that?

A. Yes, sir; that includes two loans of \$120,000 each.

Q. I am just coming to that. That does include two loans of one hundred and twenty thousand each, aggregating two hundred and forty thousand dollars that you loaned the Prison Commission?

A. Yes, sir.

Q. To make their crops on?

A. Yes, sir.

Q. Now, they were checking out all the time?

A. Oh, yes, it was an active account.

Q. It doesn't mean that there was anything like that there at any one time?

A. I can tell you what the most they ever had with us was at any one time, if you want to know. (Referring to papers.) One hundred and forty-nine thousand was the most they ever had.

Q. When was that?

A. That was in June, 1916.

Senator Bee: What was that amount?

Senator Hanger: One hundred and forty-nine thousand.

A. No, it was June, 1917.

Q. Yes. Mr. Dunn, when was it that the Governor applied for a loan—about the time?

A. April—

Q. 1916?

A. 1916, yes.

Q. It was refused?

A. Yes, sir.

Q. The Prison Commission kept its account on there just the same?

A. Yes, sir.

Q. The largest account they ever had there was in June, 1917, a year after that?

A. Yes, sir.

Q. It made no difference in the dealings of the Prison Commission with your bank that you refused the loan?

A. No, sir.

Q. He wrote a letter to you about the \$2500 deposit—that has been read here, saying that it was the West Texas Normal—came out of that fund?

A. Yes, I see that. I had forgotten about that.

Q. The letter speaks for itself. That deposit was \$2500?

A. Yes, sir.

Q. Went in when? Is this it?

A. No, I have it here. (Witness refers to date.) May 10, 1915, withdrawn April 12, 1916.

Q. They asked you—General Crane asked you if there was any unpleasantness about this refusal to make that loan. Isn't it a fact, Mr. Dunn, that your refusal to make that loan to the Governor has in no way or manner whatever interrupted the friendly relationship that has existed between him and you since 1905?

A. The first time I have seen the Governor since then, I believe, was yesterday, and he met me as cordially as before.

Q. And if there has been any interruption of any kind, you are not aware of it?

A. No. There is a letter there from him which indicated that he was a little bit hurt. Well, I don't know that you could even say that. The letter speaks for itself. But that was the only sign of displeasure.

Q. Yes. That is all.

General Crane: That is all, Mr. Dunn. Before we get away from this, we offer two letters of Mr. Patterson's. Mr. Dunn, just one moment, please. There is one question some one desires me to ask you.

Q. (By General Crane.) Was there any interest paid on this \$2,500 deposit?

A. No, sir.

Q. No interest paid to any one?

A. No, sir.

Q. Yes.

Senator Hanger: The Penitentiary Commission paid interest on the money it borrowed?

A. Yes, sir.

The Chair: You will be excused finally, Mr. Dunn.

General Crane: We offer, Mr. President, a letter written by John S. Patterson, Commissioner of Insurance, and Banking Commissioner, on July 23, 1915, to the Temple State Bank, indicating the basis on which the deposits had been made in the bank here. Counsel wish to make some objection to it.

Senator Hanger: We object to it because it is not shown that the Governor had any knowledge of or connection with the act; not material to any charge here; particularly is it not shown that it was done with the Governor's knowledge or consent.

General Crane: We propose to supplement it, we offer a little at a time, Mr. President,—by the record which we have here of the Governor's testimony, in which he stated that these matters he had discussed with John S. Patterson, then Banking Commissioner, and Insurance Commissioner, and accompanied by a further statement of what a good lawyer Mr. Patterson was, and then that those deposits were made with his knowledge afterwards, unquestionably; whether he had the knowledge of the writing of this letter or not, the only purpose we have is to show that it was done for the purpose of benefiting the bank.

Senator Hanger: With the President's permission—

The Chair: Yes, sir:

Senator Hanger: It never had been claimed—it will not be claimed from this record or any other, that the Governor knew anything about the writing of the letter or the expressions contained in that letter as to what was said; that speaks for itself. But as to the expressions in that letter and the details set out in that letter, there is no testimony, never has been any testimony, we respectfully submit, showing that there was any knowledge of such details on the part of the Governor, or what was done by Mr. Patterson or contemplated to be done by him, on the part of the Governor. Mr. Patterson, unfortunately, cannot testify about that. It was the John S. Pat-

person who was Banking Commissioner, and who is now dead; and we respectfully renew and urge the objection. We submit that the letter is not proved anyhow. They don't offer—I don't know what proof they have that that is a genuine letter.

General Crane: Oh, this is a copy that came from the Banking Commissioner's office—a carbon copy of the letter that was sent out. We got it from the Banking Commissioner's office.

Senator Hanger: I don't think, Mr. President, that that proves itself, and besides it is not offered for the act, except the statements in there which are imagined to be prejudicial. We submit that they do not and cannot be held to bind the Governor—the statements made in there. And, as suggested by Judge Martin, it is purely hearsay as to the Governor, declarations of a third party, and there is nothing in the record here or elsewhere to show that the Governor had any knowledge of the statements therein made.

General Crane: Mr. President, I fear I did not make myself understood, because this is the case that we think the facts developed—that the Governor's testimony as contained in this typewritten record here and in the Journals, indicated with clearness and certainty that he and Jno. S. Patterson, Banking Commissioner, had a conference and consultation about making these deposits in the Temple bank, and about making settlements every ninety days, and it was agreed that these settlements would be made every ninety days. Now, then, following those conferences, or as a part of them, Jno. S. Patterson, one of the parties thereto, wrote the Temple State Bank a letter in reference to making these deposits in the American or in the Austin National Bank, for the benefit of the Temple State Bank. We thought, Mr. President, that it was admissible on two grounds—first, it was a part of the acts of two men who had agreed on a certain line of action, it was perfectly agreeable to settle every ninety days, and as a result these deposits were made as the result of that conclusion; then this letter shows the carrying out of the plans and purposes that were then formed between these two gentlemen. I

think the facts will bear that construction out, and that only, and for that reason we offer the letter as a part of it.

Senator Hanger: Begging the President's pardon again, because it is taking up time; all of these statements ought to be made upon once being up, but they were not; it is my fault. This additional statement ought to be made: In the first place, it is an established precedent in this country that the statements before a House Committee on Investigation are not admissible against the respondent on the impeachment trial before the High Court. That has been held repeatedly and therefore the statements made here by General Crane as to the testimony of the Governor elsewhere, are not available to them at this juncture in aid of this statement. But aside from that, the most that can be claimed from the statement made by General Crane and the statement made from the record he speaks of, is that the testimony of the Governor showed that there was a consultation about the terms of the statute—3836, or 3638, I don't now recall which—about the provisions of that statute with reference to the filing of reports, whether or not those provisions compelled the making of reports or provided for the making of reports every thirty or every ninety days; that the result of that conference and the discussion of the terms of that statute was that the requirements was for a ninety-day settlement. Now, we respectfully submit that if this letter is submitted by them to the Chair, that as to no considerable portion of the letter does that discussion—as to the terms and provisions of that article of the statute as to quarterly reports—as to no considerable part of that matter is there any relation between the conference and the letter. And for that reason and the additional reasons already suggested, we respectfully again urge the objection.

The Chair: What has counsel to say as to the contention made as to—

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt.

Senator Bailey: I don't want to interrupt counsel, but it occurs to me that in as much as the Chair

will have to rule on the letter finally, the letter should be submitted to the Chair. The rules provide that the Chair may rule and an appeal may be taken, or the Chair, in the first instance, may submit the matter to the Court of Impeachment. I don't believe that letter ought to be read here in the first instance, or go into the records, but I don't believe that the Chair, sitting in a judicial capacity, would be influenced by the contents of that letter, and I think it fair to the Chair and fair to counsel on both sides that the letter should be passed up to the Chair and let the Chair examine it before he rules.

General Crane: Mr. President, there was nothing else contemplated. I did not expect the Chair to rule without seeing the letter.

The Chair: The Chair was going to ask to have the letter submitted to it in any event. I want to hear from General Crane on the contention made by Mr. Hanger that the evidence given by the Governor, or any party, in proceedings such as had in the House, could not be used.

General Crane: Mr. President. I think that rule is unsound as stated by the Senator. The rule in Texas is certainly well established by all of the Courts that whenever any man submits himself voluntarily to an examination he is not in duress, he voluntarily submits himself as a witness, no matter where it is. That his statements there made are admissible in any Court in the country against him. I know of no rule to the contrary, and, indeed, there can be no reason for such rule. If a man is a defendant in a civil case in the Court House and he gets on the witness stand and testifies, surely his declarations there are admissible in any other Court in the land. If it is a criminal case and he gets on the witness stand and testifies, exercising the privilege which the statute gives him, for he could stay off if he wished, the same declarations are admissible against him again, in any subsequent proceeding, because he submits himself to the jurisdiction of the Court, just like any other witness. Whatever the rule may be elsewhere, I think it cannot be reasonably doubted that this Court would be bound by the ordinary rules of evidence prevailing in Texas, and I understood, as my co-counsel suggests, that this Court

has adopted the District Court rules of this State. Is that not true?

The Chair: As far as applicable, yes, sir.

General Crane: As far as applicable, yes, sir. And it seems to me that on the admission of testimony there is no other rule to take except the rules prescribed for the admission of testimony on trials in the District Court. Any declaration of any one is admissible against his interest.

Mr. Henry: Mr. President.

The Chair: Mr. Henry.

Mr. Henry: Just one moment. The rules that we have adopted require that the rules of evidence used in the District Court shall apply wherever it is necessary or proper. Now, on the question of what the Governor testified in the House there is a well established rule and numbers of precedents. In the Swayne case this question—this very question was argued at great length in the Senate of the United States. Judge Swayne was a District Judge in the State of Florida, and the House made an investigation with a view of preferring articles of impeachment, and it was undertaken by the Managers of the House, after the case went to the Senate of the United States, to introduce certain statements made by Judge Swayne before the House of Representatives, or one of its Committees—the Committee on the Judiciary.

The Chair: Mr. Henry, will you pardon the interruption? Now, I would like to know, if you are able to advise me, whether Judge Swayne in that instance was called by the Committee of the House to give testimony, or whether it was on his own motion.

Mr. Henry: Judge Swayne appeared voluntarily before the Committee and gave testimony. Now, this very question was taken up in the Senate of the United States and was argued at great length by distinguished lawyers, and finally the Senate came to the conclusion that this testimony of Judge Swayne's, this statement of Judge Swayne's was not admissible as testimony under any consideration, and it was decided on precedent that had been established before that time, and which has been the universal rule in impeachment trials,—and this case is no different from those other trials, it makes no difference if it is here in Texas, the law and the precedents governing impeachment trials will commend themselves to this Honor-

able Court and I think they will decide it according to those rules that have been established.

Yes, and as stated by co-counsel, it makes no difference what that rule was. There is nothing to authorize the introduction of this outside statement made by a third party, with which the Governor had no connection.

General Crane: I will exhibit the letter to you, Mr. President. (General Crane hands letter to the Chair.)

Senator Page: Mr. President, I would like to ask the Court if it is permissible. I understood from counsel, Mr. Henry, that this precedent was established in the Swayne case against the admissibility of this testimony. I, of course, have perfect confidence in what Mr. Henry says, but is there a record here —

Mr. Henry: Yes, I think I have it in my room and will produce it later. I have no hesitancy in saying that was the course pursued there. That testimony was ruled out by the Senate. I will produce it.

Senator Page: I think a precedent set by the Senate of the United States would have great weight with this Senate, with this Court, and I think it might be well for the Chair to defer his ruling until we can see the authority.

Senator Bee: I think if you will go into the State Library you will find the Swayne case was reported in the Congressional Record.

General Crane: Mr. President, as the authorities are not present, that point can be pretermitted for the time, because we have some witnesses here that are waiting, and if the President will permit us we will withdraw that for the present.

The Chair: The Chair was just going to suggest that you withdraw it for the present until we can get the authorities.

General Crane: Yes, sir, and present the authorities at the same time.

The Chair: Have the next witness called, please.

The proponents called

CARL T. WIDEN,

who having been sworn and placed under the rule, in answer to questions propounded, testified as follows:

Direct Examination
By General Crane.

Q. Mr. Widen, I believe you are the assistant cashier of the American National Bank of Austin?

A. Yes, sir.

Q. How long have you occupied that position?

A. Four years.

Q. You were then assistant cashier in January, 1915, and when Governor Ferguson was inaugurated?

A. Yes, sir.

Q. And have been assistant cashier at all times since that?

A. Yes, sir.

Q. Have you his account, or statement of it, with the American National Bank, as Governor, during that period?

A. Yes, sir.

Q. Will you be good enough to exhibit it? (Witness hands counsel a paper.) Now what does this indicate, Mr. Widen, the items there.

A. Well, I can't tell you.

Senator Bee: I would like the witness to speak louder.

The witness: I don't know what the items are. I didn't look them up.

Q. I didn't mean that.

A. Oh, these here,—these over here (indicating) are the checks, and these the deposits, and these the daily balances.

Q. All right then. What is the date of this first item?

A. January 21, 1915.

Q. Then we find that on January 21, 1915, that the Governor deposited with you, with the American National Bank, \$10,000?

A. Yes, sir.

Senator Lattimore: General, pardon me, is that in the account as Governor?

General Crane: As Governor.

Q. January 22, deposited with you \$10,266.67; January 22, \$10,000; February 1, \$1,441.56; February 8, \$2500; March 4, \$2500—correct me when I am wrong in it. March 26, \$280.68; April 10, \$4846.45; June 12, \$5000; July 8, \$10,000; August 11, \$5000; August 17, \$1500; August 17, \$3000; August 19, \$1500; August 21, \$2505.88; August 23, \$500; August 28, \$500.25; August 28, \$453.15; August 31, \$12.70; September 4, \$66.50; September 4, \$356.20; September 8, \$20.60; September 9, \$37; September 16, \$3.00.

The next deposit is October 8, \$1000; November 21, \$702.50.

Q. That is 1916?

A. That is 1915, and 1916 begins here (indicating). February 3, \$6000; March 4, \$3050; March 7, \$3000.

Q. March 1—

A. Those are cross-entries, if I may explain, that was a cross entry of an error that had been made in this account.

Q. A cross entry of items of \$95 and \$95.

A. April 13, \$9932.18; April 13, \$2500; January 11, \$200; July 15, \$223.58; August 3, \$1850; November 14, \$30.60; November 29, \$57.05; February 14, 1917, \$30.61; February, 23, \$1100; April 28, \$25.

Q. Now can you give me the amount of money deposited by the Governor in the American National Bank to his account as Governor during his term of office?

A. That is the total as entered on here, the total of those deposits.

Q. What are the totals, have you them?

A. No, sir, I have not the totals, these pages would have to be footed. It will take me about two minutes to do it.

Q. All right, sir, we will wait for you.

A. (After making computation): All right, sir, I have the total.

Q. What are the totals, or what is the total of the Governor's account?

A. \$103,492.11.

Q. Now, is there anything on your books to indicate the funds to which those deposits belonged?

A. No, sir.

Q. You don't know how much belonged to the King's Highway fund, or the Adjutant General's fund?

A. No, sir.

Q. Nor anything else?

A. No, sir.

Q. What are the checks against that?

A. The total of the checks?

Q. Yes, sir.

A. \$103,434.16.

Q. When was the last check out?

A. May 15.

Q. May the 15th of this year?

A. Yes, sir.

Q. What was the amount of that check?

A. \$1,125.00.

Q. What was the check immediately preceding that?

A. November 29.

Q. 1916?

A. 1916.

Q. I wish you would examine deposits in that account, after the 23rd day of August, 1915, and see if there is any item of \$5,600.00 deposited there?

A. I see no deposit of \$5,600.00.

Q. Well, does that account come up to date?

A. It comes up to August 1, 1917.

Q. 1917?

A. Yes, sir.

Q. You haven't the entries made since that date?

A. No, sir, I was requested to bring them, though, up to the first of August, 1917.

Q. What is the balance on hand?

A. At this date it is \$57.95, that is, August 31, 1917, the balance is \$57.95.

Q. Well, but what was the balance on August 1?

A. The same.

Q. No change during the month of August?

A. No, sir.

Q. Now, have you the personal account of the Governor?

A. Yes, sir.

Q. When did that begin?

A. November 17, 1915.

Q. Your account then was opened with him on November 17, 1915?

A. Yes, sir.

Q. His personal account showed overdrafts beginning December 15, 1915, didn't it?

A. The first one was on December 10.

Q. December 10, an overdraft of a small amount?

A. Yes, sir.

Q. Then on December 15—the overdrafts continued until December 24?

A. Yes, sir.

Q. Then varied again, then again began on January 7?

A. Yes, sir.

Q. On February 23, 1917, there is a deposit of \$11,000 to the Governor's credit?

A. Yes, sir.

Q. Do you know whether that was a cash deposit?

A. Yes, sir.

Q. By whom was it made?

A. Well, I have a memorandum here,—my record doesn't show.

Q. Was it currency?

A. Yes, sir.

Q. Yes? Now, are there some other currency deposits in that account, and if so, on what date and the amount?

A. On April 12, \$25,000.

Q. How much?

A. Twenty-five thousand dollars.

Q. On what date?

A. April 12.

Q. Is that a currency deposit?

A. Yes, sir.

Senator Bee: What year, General?

General Crane: 1917.

Q. That was a currency deposit?

A. Yes, sir.

Q. Now what was the next currency deposit?

A. April 25, \$15,000.

Q. What was the next currency deposit?

A. Those are all the currency deposits.

Q. How much was that in currency during February and April?

A. Fifty-one thousand dollars.

Q. Now, do you know whether or not he made any deposit of \$25,000 along about that date to the credit of the Houston Exchange National Bank?

A. Yes, sir.

Q. Was that a currency deposit?

A. Yes, sir.

Q. Just what date was that?

A. April 13th.

Q. April 13th, \$25,000?

A. Yes, sir.

Q. Now, then, in the month of April he made how much currency deposits in the American National Bank of Austin?

A. Sixty-five thousand dollars.

Q. And eleven thousand dollars in February, made seventy-six thousand dollars all told?

A. Yes, sir.

Q. The Houston Exchange National Bank is the one of which Mr. Fox is president?

A. Yes, sir.

Q. Were there any wrappers on the currency, did you see it personally?

A. Yes, sir.

Q. What wrappers were on it?

A. The Alamo National Bank of San Antonio.

Q. How much of it was wrapped

in the Alamo National Bank of San Antonio wrappers?

A. I am not positive, but the majority of it.

Q. The majority of it?

A. Yes, sir.

Q. Is it usual, in your experience as a banker, to have large deposits of currency made in that way?

A. Our personal deposits, I would say no.

Q. Yes, I mean personal deposits. State whether it is unusual?

A. I would say it is unusual.

Q. Now, have you the Secretary of State's account there?

A. Yes, sir.

Q. See when it began and when it ended, please?

A. You mean the present Secretary of State?

Q. No, both of them, go back to the first one.

A. John G. McKay, Secretary of State, opened up on January 21, 1915.

Q. What was his deposit?

A. \$37,478.53.

Q. Just give a list of his deposits, please, if there are not too many.

A. They are deposited every day up to December 29, 1916.

Q. Every day?

A. Yes, sir.

Q. Will you give the amount of his deposits in your bank?

A. You mean the total deposits?

Q. Yes, sir.

A. That would take a little while to figure it, General.

Q. We will waive that for the time?

A. You see there are twelve pages.

Q. How often was the money checked out?

A. Well, during Mr. McKay's—during the time he was there, the rule that we have had with the Secretary of State has been that we collected the checks for him and about the 10th of the month following the collection of these checks a check is given to the State Treasurer for the amount.

Q. For the amount? You then simply act as a collecting agency?

A. Yes, sir.

Q. Well now, whatever check you would collect they were paid on or about the 10th of the month?

A. On or about the 10th, sometimes they would run a day or two over.

Q. Now, when Mr. Bartlett came in was the same rule followed, or a different one?

A. Well, it was followed in a general way, but not as closely.

Q. What was the amount of his deposits?

A. The amount of his deposit was the amount transferred from the account of John G. McKay, \$29,926.32.

Q. How long did his account continue to run in his bank?

A. Mr. Bartlett's account?

Q. Yes, sir.

A. It is still there.

Q. About the 29th of May, 1917, what was the state of the account?

A. On the 29th of May, at the close of business, the balance was \$50,891.63.

Q. At the close of business?

A. Yes, sir.

Q. Was there a date preceding that when the balance was larger?

A. On the day before, May 28, the balance was \$299,014.33.

Q. Now, do you know how that balance was reduced?

A. Yes, sir.

Q. How?

A. By five checks, each for \$50,000.

Q. Payable to whom?

A. To the Temple State Bank.

Q. Who delivered those checks?

A. The President of the bank deposited them in our bank to the credit of the Temple State Bank.

Q. Anybody accompany him to the bank?

A. Yes, sir.

Q. Who?

A. Governor Ferguson.

Q. Those five checks against your bank were deposited there to the credit of the Temple State Bank?

A. Yes, sir.

Q. And you immediately credited the Temple State Bank with the amount thereof, \$250,000?

A. Yes, sir.

Q. Did you from that day forward pay the Temple State Bank anything on those deposits thus made?

A. During the period that the money was with us.

Q. How much?

A. Two per cent.

Q. Two per cent on the monthly balances?

A. Daily balances, yes, sir.

Q. Now how long did that money—was it permitted to remain in your bank to the credit of the Temple State Bank?

A. Well, only a few days.

Q. Then what became of it?

A. Well, it was withdrawn by degrees.

Q. By the Temple State Bank? By the Government?

A. Yes, sir, by the Temple State Bank.

Q. You don't know, of course, what they did with it?

A. No, sir.

Q. Now, Mr. Widen, beg pardon if I don't pronounce it right, my memory of names is not good.

A. Widen.

Q. You had a previous account with the Temple State Bank, had you?

A. Yes, sir.

Q. Been running for some time?

A. Yes, sir.

Q. Was there ever any money deposited in your bank to its credit by any other State officer?

A. Yes, sir.

Q. Who?

A. The Commissioner of Banking and Insurance, Charles O. Austin.

Q. When did he begin depositing there to its credit?

A. I don't know. I have no records here to show.

Q. I wish you would find out a little bit later to see whether or not your account was not opened with them, the Temple State Bank, by the banking commissioner in 1915. You say that practically all of that money that was deposited by Governor Ferguson, all of that currency, was in Alamo National Bank wrappers.

A. Yes, sir.

Q. Was there any of it in any other bank wrapper?

A. I didn't notice. My attention was called to it by the first receiving teller who handed the money over to me and called my attention to it. If he hadn't done so I would not have paid any attention to it.

Q. Who was he?

A. Mr. Rogan.

Q. Mr. Rogan?

A. Yes, sir.

Q. Now, did the Governor owe any notes at your bank during the dates that these deposits were kept there?

A. Yes, sir. I have a list of the notes.

Q. What notes did he owe, just give the history of them?

A. The first note was dated October 31, 1914, for \$10,000.

Q. Well, I don't care about that, but between the inauguration, from May 15, forward?

A. A note dated January 11, 1916, \$625.26, paid on June 23, 1916.

Q. When was that other \$10,000 paid?

A. May 3, 1915. A note dated July 10, 1916, for \$1,500, paid August 2, 1916. A note dated December 23, 1915 for \$37,450, paid June 26, 1917. A note dated August 28, 1916, for \$2,200, paid June 28, 1917. A note dated August 2, 1916, for \$7,350, paid June 28, 1917. A note dated June 30, 1917, for \$9,550, due on demand, August 28, 1917, a credit of \$4,080.19, leaving a balance due \$5,469.81.

Q. That is up to date?

A. Yes, sir—no that is up to August 1, 1917.

Q. I know, August 1. The \$34,000 note, what became of that?

A. \$37,450.

Q. What became of that note?

A. It was paid June 26, 1917.

Senator Caldwell: Mr. President.

The Chair: The Senator from Travis.

Senator Caldwell: Did the witness say that was up to August 1 or the 31st?

The witness: August 1. My subpoena here requests it up to August 1st.

Q. How was that \$37,400 note paid?

A. \$37,450. I was told this morning—

Q. Well, do you know? I wouldn't ask you to state from hearsay.

A. Well, it was paid by the Temple State Bank. It was taken up by them, endorsed by us without recourse.

Q. On what date, did it say?

A. June 26, 1917.

General Crane: The witness is with you.

Cross Examination

By Mr. Hanger.

Q. Did you handle this transaction, this thirty-seven thousand four hundred and fifty dollar note?

A. No, sir.

Q. Wasn't handled by you at all?

A. No, sir.

Q. You are testifying from what someone else told you about that?

A. Yes, sir, and our records in the matter as they appear.

Q. Yes, sir. Now, your records show that it was transferred or assigned to the Temple State Bank?

A. Yes, sir.

Q. You have examined the record?

A. No, sir, I have not.

Q. Someone in the bank told you that it was done?

A. Yes, sir.

Q. Well, that is—Now, this first note you mention of ten thousand dollars, was given in 1914?

A. Yes, sir.

Q. October 31st?

A. Yes, sir.

Q. Paid May 3, 1915?

A. Yes, sir.

Q. This \$250,000 that you said there was two per cent paid to the Temple State Bank on, only remained in your bank a few days?

A. Yes, sir.

Q. The interest payment ceased when it went out of your bank, of course?

A. Yes, sir.

Q. What do you mean by "A few days"—four or five or six days?

A. Yes, sir, I would say less than a week.

Q. Probably four or five days, then?

A. Yes, sir.

Q. You said—I think you said—if I am wrong, you will correct me—these deposits were not made to you personally?

A. No, sir.

Q. You didn't see the deposits made?

A. I saw them after they were in the bank.

Q. Yes, I understand, but I say you did not see them when they were actually made by Governor Ferguson?

A. All right.

Q. You don't know to whom they were made?

A. Yes.

Q. Of your own knowledge?

A. Yes, sir.

Q. You didn't see them?

A. Yes, but I know the man who brought it into the interior of the bank.

Q. Wait a minute, let's see how you know it. You were not present when it was made?

A. When the actual transfer was made?

Q. When the actual deposit was made you were not present?

A. No, sir.

Q. You didn't see the Governor make the deposit?

A. I saw him in the bank.

Q. I understand, but you didn't see him make the deposit?

A. No, sir.

Q. You didn't see him deliver the money to anyone in the bank?

A. No, sir.

Q. Did you see him make any of those deposits himself?

A. No, sir.

Q. Now, did you see him in the bank on one occasion or more?

A. Well I have seen him several times in the bank.

Q. Yes but the times you are speaking of here about the deposit of this currency, did you see him in the bank on one of those occasions or more?

A. Well, I never saw him deposit any currency.

Q. I understand that. I don't want you to misunderstand me. I am not going to take issue—I am not intending to ask an offensive question.

A. Yes, sir.

Q. You said just now you saw him in the bank. Did you see him on the occasion when any of those deposits were made in the bank? I thought you started to say you did.

A. Yes, sir.

Q. On one occasion?

A. On one occasion.

Q. On one occasion. Now, then, your deposit slips there, though, show that there were four separate deposits made?

A. Yes, sir.

Q. Now, it was on only one of those occasions you saw him there?

A. Well, I may say that the only time I saw the Governor at the time a deposit was made at the time of the transfer of this \$250,000.

Q. Well, there wasn't any deposit to the Governor's personal account at that time, was there?

A. No, sir.

Q. Well, you say the only time you saw him in the bank at the time a deposit was made was when the \$250,000 was transferred from the American Bank to the Temple State Bank?

A. Yes, sir.

Q. Well, on the occasions then when he made these personal deposits—when these personal deposits were made in the bank, rather, you didn't see him there that you know of?

A. No, sir.

Q. Well, this money that had the wrappers on it, that was not on the occasion of the two hundred and fifty thousand transaction?

A. No, sir.

Q. That was on some other occasion?

A. On the dates as given in the statement.

Q. Do you recall that those are the exact dates, or are you going by—

A. (Interrupting.) I am going by the record.

Q. I see. Now, you didn't see the Governor there?

A. No, sir.

Q. You saw the money in the bank, either on—where was the money that you saw?—on what desk?

A. Well, it was brought to the first receiving teller.

Q. First receiving teller?

A. Yes, sir.

Q. You are stating that that was the money, or the inference is that that was the money from your testimony, from what somebody else told you?

A. I saw the money.

Q. Yes, but you don't know where it came from except and unless you base it on what somebody else told you?

A. Well, I saw the deposit at the time—the deposit slip.

Q. Yes.

A. And the money with it.

Q. Yes, but you didn't see the Governor there?

A. No, sir.

Q. You didn't see him deposit any money?

A. No, sir.

Q. Mr. Widen, you said that you had deposits from various other officials—State officials?

A. Yes, sir.

Q. What officials of—what State officials have been in the habit of keeping accounts there in your bank?

General Crane: Now, Mr. President, we have no objection to going into that on proper occasions, but we submit to the Chair that the accounts kept by any other person unless it was controlled by the Governor is immaterial and irrelevant here. The Governor is the Chief Executive of the State, and we are trying to develop the facts to see whether they show that he has violated the law. I don't know what the purpose of the other question would be, but it would be no defense for the Governor to say that somebody else had violated the law, because it is his duty not only to enforce the law himself but to see that

the heads of the departments obey the law as well, and I think the time of this Court would be unnecessarily taken up looking into some other matter, unless it is to exonerate the Governor; if it is simply to show that somebody else violated the law it is not admissible.

The Chair: What is the relevancy of the question?

Mr. Hanger: The General himself states the question unconsciously. The only purpose is to show that nobody has violated any law. Another purpose is to show—it might be admissible to show the interest of the witness—rather, the interest of the institution, as well as the witness—and another, the General has just asked the witness about other State officials keeping accounts there and has shown the amounts; he has only stated two, if I recall, it being claimed here that these two State officials, being appointive officials, kept their accounts there under compulsion from the Governor. Now, I think we have the absolute right to show that other State officials kept accounts there who were in no way responsible to him, and that these were similar transactions and harmless and proper transactions. We expect to show by the witness that other officials the same as some of these he has testified about—that they were a collection agency; he said that. Now, we expect to show that that is the general course of collection of money due the State, collecting it through this bank, and that it is a proper transaction and a necessary transaction and the only way they can do it without the loss of money. And, as Judge Martin suggests, to show the want of fraudulent intent and action.

The Chair: Do you desire to be heard any further?

General Crane: Yes, sir. I am waiting for them to finish their consultation.

Mr. Hanger: In addition to that, as bearing upon the question—we submit it is admissible as bearing upon the question of when these reports or when these settlements are required and when they should be made, it being contended on the one hand that the money must either be turned in immediately, at once, or monthly, and on the other hand that it is only required—certain moneys are required to be turned in monthly

and certain other moneys required to be turned in quarterly.

General Crane: The fact that other officers make deposits and make their collections through the bank—I don't understand that to be the question asked, but I thought the purpose was a different one, which we may concede, though that is not relevant—the fact that these collections were made through the bank, we are making no trouble about that. The complaint about Governor Ferguson is that after the money was collected or deposited in the American National Bank, that instead of transferring it to the Treasury he transferred it to the Temple State Bank—that's our objection—and that he took the funds of the State and deposited them from the Gulf to the Temple State Bank, the Union National, and his own bank, after they had been collected and there was no longer any necessity of using any bank. Now, I can't see, Mr. President, how it will help that situation to show that some other officers, or take up the time of the Court to show that other officers collected their checks through this bank or the other bank.

Mr. Henry: Mr. President, I don't want to encroach upon the time of the Court, but let's meet this question now squarely as it is presented. General Crane has brought a witness here who has offered certain evidence in regard to the Governor's account and certain State officials, and he has examined the witness fully about those things. Now, haven't we a right to go further and ask this witness and prove by him how far back this custom and system extended? Have we not the right to show by this witness by further questions that this system and custom have existed for a long period of time, for a number of years, and it was not a violation of the law, has not been considered a violation of the law?—and haven't we a right to show by this testimony and even go much further than this question indicates and show an utter absence of a willful intent on the part of the Respondent, or a fraudulent intent? Doesn't it go to the very vitals of the good faith of the Governor's actions and these other officials' actions? Let's meet the question fairly and squarely, and if it has been the custom here for a number of years for these officials whose accounts have been brought here by

General Crane's witness to deposit those funds in the bank, and it is not a violation of the law and shows an utter absence of a willful intent or a fraudulent intent, then haven't we a perfect right to press the inquiry further and show that other State officials have done the same thing believing that there was no illegal action on their part, and will it not necessarily go to the good faith not only of this Respondent but of other State officials who have done the same thing? I earnestly insist that it goes to the very heart of this question, and we are entitled to ask this witness how far back this custom has extended and for how many years it has been handed down from administration to administration, and if it has not been any violation of the law we have a right to show it here. We are not trying to show that the Governor is trying to justify himself in doing something wrong because other men did wrong, but we are endeavoring to show that he did right and that these other men have not violated the statutes willfully.

The Chair: Gentlemen, in the opinion of the Chair, if a question is illegal it settles—the fact of its illegality is settled by the law. If somebody else has violated the law—I am not saying that anybody has—it would not be, in the opinion of the Chair, any excuse for this Respondent to violate the law. The Chair is unable to see where the testimony as to the practices of others in this regard would be relevant to any inquiry before the Senate. The objection, therefore, is sustained.

Senator Page: Mr. President.

The Chair: The Senator from Bastrop.

Senator Page: I would like to make this suggestion to the Court as a member of the Court: I, for one, only want to see such evidence adduced here as is proper testimony in this case; but as a lawyer of some experience, naturally these questions occur to me, and I might make this suggestion to the court, and I do it with the deference to the position taken by the Court, and if I am improper, of course, the Court will correct me: It seems to me that the allegations of the Articles of Impeachment and the trend of the testimony is to show that when Governor Ferguson was inaugurated he caused a change to be made in the departments of the

State and instead of the money pursuing the ordinary course that it did before he was inaugurated he caused the heads of those departments to change the ordinary course and adopt a different course. That being the allegation of the Articles of Impeachment, as I understand, and the trend of the questions of those who are representing the impeachment here, that being the trend of their questions, as to whether or not the deposits did not begin at the time Governor Ferguson was elected Governor, and not before, it occurs to me on that line I might be pardoned for making the suggestion further, your Honor, that this investigation ought to be full and free and this Court have the benefit of any testimony here that would have any bearing at all on the case. Here is a charge that the Governor of Texas has deflected certain funds and caused the heads of departments to change their course. Now, it is proposed to prove that long before he was inaugurated certain officials of Texas had been pursuing the same course that the Governor has, and it seems to me very clear—and I want it thoroughly understood that I am merely making this suggestion as a lawyer, the way it occurs to me—it is now nearly noon, and I suggest that the Court might well defer its ruling and hear further from counsel if they see fit to discuss the matter further. I make that suggestion with all due deference to the Court.

The Chair: I will state in response to the suggestion made by the Senator from Bastrop that, as the Chair understands the charges embraced in the Articles of Impeachment, the question as to who has kept deposits in this bank or for how long or what credits were given to them is not relevant at all, other than the conduct of the officer whose conduct is now under review. As stated, it might possibly go to the extent of the practice if there was a practice, and that practice was known to the Governor. That is the only possible event, in the opinion of the Chair, in which relevancy might appear.

Senator Page: If I may be permitted further, wouldn't it go more to the weight than the competency of the testimony—isn't the objec-

tion to its weight rather than to its competency?

The Chair: Not as to violations of the law, if that is the purpose Mr. Hanger has in mind. If it is the purpose to show that other State officials and other persons violated the law—

Mr. Hanger: (Interrupting): To the contrary, Mr. President. If you will pardon me. I have never assumed that there has been any violation of the law at all, but contend that there is not, and that the long continued existence of the practice is a circumstance indicative that there has been no violation of the law either now or heretofore.

Senator Bee: Mr. President.

The Chair: The Senator from Texas.

Senator Bee: I want to say, in connection with the statement of the gentleman from Bastrop, that I agree with the Court's position that any illegal action by one person does not justify illegal action by another. But we are sitting here in a matter of State-wide importance, and we are sitting here as a Court of Impeachment, and I suggest that even though we take up more time, that there be no hampering in any way of all the facts that may come out, so that this court as well as the people, who are interested—it is in the name of the people of the State—will know that this court, sitting as a court, might elicit all testimony, the effect of which will elucidate the question. Now, I agree with the Senator from Bastrop that we ought to make the investigation so full that there can be no question hereafter that everything was adduced and presented before the court passed their judgment.

Judge Martin: Mr. President, will you pardon me for calling your attention for a moment to the statutes? Now, these charges are based upon the statutes relating to misapplication of public funds, and the statute in one paragraph in these charges uses the words, "If he shall fraudulently misapply public funds," and another section on which they base these charges that uses the term, "willful." Now, the point at issue is this: It is not to show that anybody else violated the law, but on the other hand, for the purpose of elucidating our position, that nobody has violated the law; but the

statute having used the word "fraudulent"—that is, that he must take the property of another with intent to appropriate it to his own use and benefit—and under the other section that it must be "willfully done"—that is, with evil intent or legal malice.

The Chair: Judge, if you pardon me, are not the words, "fraudulent" and "willful" defined in the statute?

Judge Martin: Yes, sir.

Senator Hudspeth: A little louder.

The Chair: The question was—

Judge Martin: Yes, but it uses the word, if he shall "fraudulently" misapply.

The Chair: Yes, sir.

Judge Martin: Now, he may go and misapply every dollar of the money that came into his hands, but if it was not fraudulently done he would be guilty of no offense—it would not be a violation of the law. On the other hand, if it uses the word "willful" it must be willfully done—that is, with evil intent and with malice. The word "fraudulent" misapplication is the very gist of it, and any circumstance bearing on that which would influence the party acting to take away his fraudulent intent would be admissible evidence, and, as said by the Senator from Bastrop, it would go rather to the weight than to the admissibility of the testimony. In other words, if I go down there and take a horse, although it may not be my property, yet, on the other hand, if I take it under the belief, the honest belief, that I have a right to do so, why, it would not be an offense in any way whatsoever. This man might take money and apply it in a bank, and although he might not have a right to do it, yet if it had been a custom for thirty or forty years, of which he was cognizant, and he believed he was pursuing a legal policy, it would deprive that act of the fraudulent or willful intent, and every fact and circumstance surrounding the entire transaction would be admissible to show the intent with which he acted; and it is for that purpose and that purpose only that this evidence is sought to be introduced—not as justification, but as reflecting the intent with which the party acted at the time.

The Chair: If counsel will per-

mit me, I would like to say that we are expecting a committee from the House at 12 o'clock to inform the Senate that it is organized and ready for business, and the Chair will defer final ruling until the Court meets again after recess.

Senator Lattimore: Mr. President, I move that we recess until two o'clock.

(Thereupon, upon motion of Senator Lattimore, at 12 o'clock m. the Senate sitting as a High Court of Impeachment recessed until 2 o'clock p. m.)

In the Senate.

President Pro Tem. Dean in the chair.

House Notifies the Senate.

At this time a committee from the House appeared and notified the Senate that the House is now organized and ready for the transaction of business.

Recess.

At 12:03 o'clock p. m. the Senate on motion of Senator Clark, recessed until 2:00 o'clock today.

After Recess.

(Afternoon Session.)

President Pro Tem. Dean called the Senate to order.

In the Court.

(Pursuant to recess, the Senate, sitting as a High Court of Impeachment, reconvened at 2 o'clock p. m.)

The Chair: The Court will come to order. Senator Hanger, I wish you would have the question read that gave rise to the discussion this morning.

General Crane: Mr. President.

The Chair: General Crane.

General Crane: I think that the ruling of the Chair is entirely correct, and our objection is entirely correct; but there are some of the Senators who feel that they want to hear that testimony, and in the interest of letting them understand we have nothing to conceal, we withdraw the objection at the present, but with the right to re-

new it in the event that the examination takes too wide a scope.

The Chair: Have the witness recalled to the witness stand.

General Crane: Mr. Widen, is he here? Mr. Sergeant-at-Arms, call Mr. Widen to the witness stand, please.

The Sergeant-at-Arms (After a moment): Mr. Widen hasn't come back since noon.

Mr. Hanger: 'Phone the American National Bank, I believe he thought we had gotten through with him. We will just wait a little bit.

General Crane: Mr. President, while we are waiting, as this case will have to be read sometime, I desire to call your Honor's attention to the Swayne case, to which opposing counsel referred.

The Chair: I would be glad to hear it.

General Crane: And without undertaking to read it all, I think that you will see that the question is an altogether different one there from the one here. The Federal Statutes, Section 859, reads as follows:

"No testimony given by a witness before either House, or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury, committed giving such testimony, but an official paper or record produced by him is not within the said privilege."

Now, they argued that pro and con, the managers argued that this was not a Court in which he was being tried for any criminal charge, and so forth. The others argued that it was a Court, and that he was exempted from any such exposure, and upon that question the Senate divided, the majority voting "No." But among those voting on the affirmative, even in that kind of a case, were some very able lawyers, including one of the Senators from Texas. Blackburn—

Senator Page: Who was the Senator from Texas, General?

General Crane: Bailey—Senator Bailey. Senator Bate, Senator Blackburn of Kentucky, Senator Carmack was a newspaper man—but Senator Clarke of Arkansas was always recognized as an able lawyer, and McLaurin, and particularly Senator Morgan of Alabama, and Stone of Missouri, and Spooner of Wisconsin. I am not denying, however, that there were good lawyers on the other side—but the

point to which I wish to call attention now is that we have no Texas statute making any such declaration. The Federal Statute, as a matter of course, cannot relate to purely a State proceeding, and could only be applied to conditions that it pretends to be applied to, or in terms is applied, and that is to a proceeding that the statements made in a Congressional committee by any party appearing before it cannot be used against him in any criminal case. Now, as we have no such statute, then the ordinary Texas rule applies, and I think the statutory rule here—I haven't it right before me, but I am quite sure they apply to county officers; they have a statute in reference to the removal of county officers, a similar sort of proceeding, and in that statute, 6048, of the Revised Statutes of Texas, it is declared (reading):

"The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the Court in other civil cases."

Now, taking this as a civil case, and I believe it would be concluded if this be a civil case, and the statute so denominates it, this statute, even if the Federal Statute applied to the proceeding, would not reach us, because it relates to criminal cases only. In order to make that point clear, I will re-read it (reading):

"No testimony given by a witness before either House or before any committee of either House of Congress, shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony."

Your Honor will see that it will be admitted as in a civil proceeding, and the Texas Legislature seems to declare an impeachment proceeding to be a civil proceeding, so that if the Congressional act would apply to that question—and construe it with the Texas act, it would be necessary to hold that this is a criminal proceeding in order to make it applicable. But it is not necessary to argue that, I am talking to too many good lawyers here who know that a Federal Congress is without power to prescribe the rules of evidence for State courts; the State must do that for itself. Now, Senator Bailey argued—

Senator Bailey: Mr. President.

The Chair: The Senator from DeWitt.

Senator Bailey: May I interrupt counsel? I would like to ask a question on the rules of evidence as referred to by counsel.

The Chair: The Senator from DeWitt desires the following question to be propounded to counsel.

General Crane: Yes, sir.

Senator Bailey: Touching the Federal case (sending up a written question to the Chair).

The Chair: I will read the question so that you may discuss it.

General Crane: Yes, sir.

(Thereupon the Secretary of the Senate read the following question to the Court, viz:

"In the case discussed by counsel, did the witness whose evidence is sought to be reproduced originally voluntarily testify in his own behalf, or under process, as in other cases?"

General Crane: Now, that point I have not made clear here. I think, however, he voluntarily testified, but I will come to that in a moment. Mr. Bailey made this argument, and made this quotation of a different statute with some degree of force and plausibility. He says (reading):

"If the Court please, Section 103 of the Revised Statutes provides—

"No witness is privileged to refuse to testify to any fact, or to produce any paper, respecting which he shall be examined by either House of Congress, or by any committee of either House, upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous."

General Crane: He then added:

"Plainly, the purpose of that statute was to enable the committees of either House or either House itself, to compel the attendance and the testimony of any witness, and it provides, contrary to the rule of law obtaining in the courts, that the witness shall not be permitted to decline to testify upon the ground that it might disgrace him or tend to render him infamous. Having deprived him of the privilege which he would enjoy before the courts of this country, and having compelled him to testify before its committees, even to his own infamy or disgrace, Congress very wisely then provided

that such testimony should not be adduced against him in any criminal proceeding in any court.

"But, Mr. President, this is not a criminal proceeding within that statute, and this, in my opinion, is not a court within the meaning of that statute. The Constitution may seem to contemplate that we shall sit as a court when we try the President, because it provides that the Chief Justice of the United States shall preside at such a trial. Whether that was intended, as has been suggested by some, to protect the President against the rulings of the Vice-President, who might succeed to the presidency in the event of the President's conviction and removal, or whether it was intended, as has been suggested by others, to secure a more certain and a more correct interpretation of the law, I do not undertake at this time to decide."

General Crane: But the majority decided against this contention, but it was because of the statute and because the vote concluded, contrary to the contention of Senator Bailey, that it was a criminal proceeding, and therefore, that he could not be compelled to testify. Now, Mr. President, the rule in Texas is entirely different. Even if it be conceded that it is a criminal proceeding, as before stated—and I presume that no lawyer within the sound of my voice will controvert it—that Congress has no authority to prescribe rules of evidence for a Texas court, or for any State court, nor does Congress ever assume such prerogative; it recognizes the distinction that its statutes in reference to procedure are applicable to Federal courts alone; and our rule is that any man who puts himself upon the witness stand, whether it is voluntary or involuntary, whether forced by the process of court or volunteering in his own defense, that man is a witness, and any declaration he makes thereunder against his interests may be offered by any party adversely interested to him in any other proceeding. Now, as has been aptly suggested by my associate counsel, suppose that some other personal litigation of the Governor was pending in some other court of Texas, and that parties to that suit adversely interested to him—

Mr. Hanger (interrupting): Bet-

ter wait until that rain passes, we cannot hear.

General Crane: Counsel say they cannot hear me, and I am sure the President cannot, because he is further away. I will wait until the rain stops.

The Chair: I can hear. Go ahead.

General Crane: Yes, sir? You can hear? Yes? Well, now, our contention is that if counsel opposed to Governor Ferguson in the civil litigation should offer his sworn testimony made before the Committee in the House of Representatives, which contained admissions against his interests in that case, I do not believe there is a lawyer within the sound of my voice who would not say that those declarations would be admissible for whatever they were worth. I will not stop here now to produce authorities upon that question, because it seems to me to be elementary—particularly in this State. Now, if a man charged with crime should get upon the witness stand and testify, he waives, as has been aptly shown by the various opinions of the Court of Criminal Appeals, he waives all of his personal privileges, and his admissions then made can be introduced against him in any case to which he may be a party.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: If the gentleman will permit me one question I wish to propound?

General Crane: One moment, I want to answer the question presented, yes.

Senator Bee: Yes, sir.

General Crane: This answers the question propounded by Senator Bailey, which I am very glad to do. This is Mr. Manager Palmer, this is a statute, Mr. President, on which the objection is based—I will not read that again; the offer is to prove that Judge Swayne voluntarily appeared before a subcommittee of the House Judiciary Committee and made a voluntary statement in his own defense; he was not a witness, was not summoned, and his statement was entirely voluntary.

Senator Bee: Mr. President, there is a question I would like to propound.

The Chair: The Senator from

Bexar desires this question to be propounded. .

General Crane: Yes, sir.

Senator Bee: Right at this time. in view of something that was said by the General.

The Chair: I read the question. (Reads):

Q. Do I understand from counsel that the Senate of the United States held in the Swayne case that an impeachment trial is a criminal trial?

Senator Bee: Under the Federal Constitution?

The Chair: Under the Federal Constitution.

General Crane: Well, that is only inferentially stated.

Senator Bee: I understood that to be the statement, that is the reason I wanted to know.

General Crane: Well, I was reading the contention that it was not a criminal trial, and the way the question was put you would only have to arrive at that by induction; the question, the way the Presiding Officer put it, then submits to the Senate, after the conclusion of a long discussion—submits to the Senate the question whether the evidence offered by the Managers on the part of the House is admissible. An affirmative vote admits the testimony, and a negative vote excludes it. Then, the "Ayes" and "Noes" are taken, with twenty-eight "Ayes" and forty-five "Noes." Now, whether they put it upon the ground that it is a criminal case—I take it, however, that they did—and that that statute provided that testimony in a criminal case would not be admitted if it was in the nature of admissions made before a committee of Congress, that therefore, because of that statute they held that it ought not to be admitted. Now, what I am insisting on is that in the absence of such statute here, that there is nothing upon which to base the contention that the testimony is not admissible.

Mr. Hanger: Mr. President, I hate to—no, I will take that back, I don't hate to take issue with the General on that, because the statute on the subject, which the General has overlooked, was enacted in this State by reason of a proceeding going on, before the Legislature, with which the General was then, and is now, familiar. If he will turn to

Article 5517, he will find this statute (reading):

"In the investigation of any public officer elected by the Legislature of the qualified voters of the State of Texas, or of any nominee of any political party in said State"—in that instance it was the investigation of a nominee—"for election by the Legislature or qualified voters thereof, to any public office in respect to matters or charges that reflect upon the personal or official integrity of such public officer or nominee"—

In the House of Representatives, where this testimony was given, that resolution expressly provided that in addition to the charges specifically and expressly laid, that they might make investigation of anything else that affected the official integrity of Governor Ferguson.

"—or that disqualifies, or tends to disqualify, such public officer to hold the office to which he has been elected," and so forth and so on—

Making it very clear and covering the exact situation that existed in the House of Representatives, and under which this investigation was had; and it winds up with this language, which meets the contention made by General Crane when he said that no lawyer within the sound of his voice would take issue with him as to this being admissible (reading):

"And provided, further, that the testimony given by a witness, before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee."

As I read—as I followed the reading of the Federal Statute, this is very nearly in the same language. Now, Section 10, of Article 1, of the Constitution says (reading):

"In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both, shall be confronted with the witnesses against him, and shall have compul-

sory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the Army or Navy."

A criminal offense, except in impeachment and the other instances, clearly denominating—just as clearly as if it had used the express language—that it is a criminal offense and proceeding.

Mr. Henry: Mr. President.

The Chair: Mr. Henry.

Mr. Henry: In referring to the Swayne case this morning I was depending on my recollection, which carried me back over about twelve years. It happened that I was a member of Committee on the Judiciary when Judge Swayne came before that committee and the investigation was being made by the Judiciary Committee of the House. I am gratified that my memory was not inaccurate, but I quoted substantially what occurred on that occasion. Now, Mr. President, I desire to say that there has been seven impeachment trials in the Senate of the United States—eight, up to this time, and never yet has a Respondent taken the stand to testify in his own behalf. The House of Representatives was sitting in the nature of a grand jury in this case, and preferred and exhibited articles of impeachment to the Senate, and the Senate has now resolved itself into a Court and must try the case. Now, when this case is concluded, it may be that this Respondent will decide that it is not necessary to go further and offer testimony, because the Managers may have failed in making out their case. If that should be so, then a motion in the nature of a demurrer to the evidence would be permissible. Now, General Crane, as counsel representing the Managers, is undertaking to bolster up certain bits of evidence that he has produced on the stand here by something that the Governor testified to in the House of Representatives sitting as a Committee of the Whole. In other words, without that bolstering up of the testimony which he reproduces from the Journals, which he held up before the Court this morning, then his evidence is not sufficient. Now, I take it, that when we argue this case to its last analysis that most lawyers

will come to the conclusion that it is in the nature of a criminal proceeding. This is a most important question and we should understand precisely the point at issue. I well remember when Judge Swayne appeared twice before the Committee on the Judiciary, voluntarily, and testified, and when someone said something about him acting under the sanctity of his oath of office as a Judge—some member of the Committee made that suggestion, I recall clearly, if I may be permitted to say so, that he insisted on being sworn, and held up his right hand and was sworn as a witness before the Committee on the Judiciary. Now, when the House had acted on the report of the Committee and it had gone to the Senate, then Mr. Palmer, a very distinguished lawyer—one of the ablest I ever knew, who had been Attorney General of the State of Pennsylvania for some twelve or eighteen years, offered in the Senate to prove certain things that Judge Swayne—I will read the exact language: "The Managers offered to prove that the Respondent on the 28th day of November, 1904, at the City of Washington, D. C., voluntarily appeared before a sub-committee of the House Judiciary Committee, and not having been summoned as a witness, or otherwise, and voluntarily made the following statement." Whereupon Mr. Thurston, a former Senator from Nebraska, who was then representing the Respondent, objected to this testimony and read Section 859 of the Revised Statutes of the United States—which was read, I presume, by General Crane in my absence; I was out of the Chamber for just a moment. Now, the Senate then seriously took up this question and discussed it for a considerable length of time, and one of the distinguished Senators from Texas, Mr. Bailey, took the position, and I well remember his argument, that this was not in the nature of a criminal proceeding and was not a criminal proceeding, and the Respondent had no right to immunity from testifying or from any statement that he had made elsewhere, by reason of the fact that he had gone on the witness stand. That question is discussed at very great length and finally Mr. De Armond read a section of the Constitution, or a phrase, I might say, taken from the Constitution of the United States, to show that it was a criminal proceeding, and it seemed to be conclusive, and that was that the

Constitution of the United States reads: "The trial of all crimes, except in cases of impeachment, shall be by jury." Now, that is Section 2 of Article 3 of the Constitution of the United States. But prior to that the Court had voted, and the vote was 28 to 45, but so impressed were some of the members—the Senators, that this was a criminal proceeding, that the question was again raised and argued at very great length; and among some of the Senators who took part in that discussion was Senator Hoar of Massachusetts, and one of the Senators from Texas, and others not necessary to mention; and then the Chair stated the question again, after Mr. Bailey of Texas had asked that the Senate vote on the question again and go into executive session, so serious was the proposition; and the Senate did go into executive session by a vote of 53 yeas to 18 nays. Then the question was—and if General Crane read this it is not amiss to re-read: "Before the reading of the Journal the Presiding Officer will announce that at the last session of the Senate in the trial of impeachment, the question of evidence was decided, namely, the proposal of the Managers to introduce statements by Judge Swayne made before the Committee of the House of Representatives, and it was decided that such statements were inadmissible. The vote by which it was decided will appear upon the reading of the Journal." Then the Presiding Officer, or the President of the Senate, put the question this way: "Are the statements made by Judge Swayne before the Committee of the House of Representatives admissible in evidence?" And it was determined that they were not—yeas 29, nays 47, after a thorough discussion. Now, in that case only the statute had been invoked and was discussed before the Senate. Here we invoke a statute similar in substance and almost identical in form, enacted, I believe, by the Legislature of the State of Texas since that impeachment trial; and Mr. Hanger has just read that statute to the Court. Then in addition to that, the Constitution of this State stands in the pathway of these gentlemen and prohibits their making out their case by some statement made by the Respondent over in the House of Representatives when they were sitting as a Committee of the Whole; and until the Respondent takes the stand, which he

will have the right to do in his own behalf if he desires it, these gentlemen are forbidden by these statutes and the Constitution from bolstering up their evidence here, by reading from the record of the House of Representatives. Why, Mr. President, there we had the greatest latitude when evidence was being adduced, and we threw away all rules of evidence, as the gentleman well knows, and had a most exhaustive and thorough investigation. But now, we come into a court—the most solemn Court that can be convened in this State, and this case is to proceed under the Constitution and the rules of the Court; and until this Respondent takes the stand or offers some evidence in his own behalf, these gentlemen must make out their case and they must adduce their testimony on that stand, and the Respondent is entitled to be confronted with the witnesses and to hear the charges, and the burden is entirely on these gentlemen.

General Crane: Mr. President.

The Chair: General Crane, the point—

General Crane: Sir?

The Chair: The point the Chair would like to hear discussed is the applicability of the statutes.

General Crane: Yes, sir, that is what I was going to do, and I was going to frankly admit to the Chair that I had overlooked the provisions of this statute in the many things connected with this proceeding from first to last; and yet, I am going to submit to this Chair that it is not applicable to this case. It is not in terms the same as the Congressional Act, and I think it could be disposed of on that line; but I am treating it—will treat it later as if it were. It seems that in 1907 the Legislature passed this law—it says: "In the investigation of any public officer elected by the Legislature, or the qualified voters of the State of Texas, or any nominee of any political party in said State for election by the Legislature, or qualified voters thereof, to any public office in respect to matters or charges that reflect upon the personal or official integrity of such public officer or nominee, or that disqualifies, or tends to disqualify, such public officer to hold the office to which he has been elected or nominated by any political party, or any investigation of any other matter, or for any other purpose that may be

ordered by the Legislature of this State," and so forth. Now, that is broad enough to comprehend everybody that far. (Continuing reading.) "before any committee heretofore appointed by the Legislature of this State, or by either house of said Legislature, and now pending, or before any committee that may hereafter be appointed by the Legislature of this State, or either house thereof, at this or any subsequent session, such investigating committee and each member thereof, shall have full power and authority to administer oaths to officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it"—The point I wish to call the attention of the Chair to is that the statute makes a clear distinction between witnesses whose attendance is compelled and whose testimony must be given, and that of the parties. (Continuing reading): "And said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated, in answer to all pertinent questions propounded by it, or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him by such committee, or to answer any such pertinent questions propounded; provided, that such fine shall not exceed one hundred dollars, nor shall imprisonment extend beyond the date of adjournment of the Legislature then in session; and provided further that the testimony given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee."

Now, it may be insisted that this is a narrow construction, but I presume the Legislature intended some discretion; or they would not have used this language—it says, they may

administer the oaths to any witnesses and parties called to testify before it, "and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses." The protective part of the statute, whatever it may be, and I will get to its scope next, relates only to the witness, and it does not pretend to protect a party who voluntarily puts himself upon the witness stand. It may be said by opposing counsel that the moment a party puts himself upon the witness-stand that he becomes a witness, but still he is not the witness that can be compelled to attend, under this statute, and give his testimony.

Now, the other part of it to which I shall direct the attention of the Court is that this is not a criminal case. By no sort of tortuous construction can an impeachment case under the Texas laws be converted into a criminal case. The very phraseology of the Constitution itself forbids such interpretation. I called the attention of the Court to the language of Article 15, by which this Court has the authority to try impeachment cases. It says:

"The power of impeachment shall be vested in the House of Representatives."

"Impeachment of the Governor" and so forth—I pass over that.

"When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath," and so forth.

"Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this State." That is all. "A party convicted on impeachment shall also be subject to indictment, trial and punishment, according to law." There is your Criminal Court.

Now, if this is a criminal case, why the necessity of defining crimes? Everyone knows, I presume, that an officer may be impeachable for conduct that does not constitute a crime at all. An agent of this State may be—an officer of this State may be impeached for doing something that is no crime against the statutes, but for such things that may disqualify him from rendering efficient service—do not convict him of any crime, could not convict him

of a crime; and yet counsel, as I understand them, for the other side, converts the Senate into a Criminal Court trying a Governor for an impeachable offense and then seek to protect him by the provisions of the Constitution which protects a witness against having his declarations read against him in a criminal trial. Why, if the Court please, the term "criminal trial" in this country is as well defined as are any other phrases or sentences or words in our vocabulary. When a man is tried for a crime it means that he is tried for a crime when an indictment or an information has been presented in a proper court of competent jurisdiction, where he is required to plead "Not Guilty," where he has the right to claim a jury, and where he has the right to all the Constitutional protection which this instrument throws around him. This, however, is a special tribunal. Why, there isn't any question, it seems to me, that it is not a criminal trial. What is its purpose? The purpose is to ascertain whether an officer has been faithful to his trust or not. If he has not been faithful to his trust it becomes the duty of this Court to remove him from office. It does not inquire whether he ought to be punished as a criminal, but whether he has been unfaithful to his trust and whether a sound public policy demands his removal. He may have committed a crime, or he may have not. Now, after all that is over, the Criminal Courts can proceed to investigate him, and if they conclude that he has violated some penal statute of the State, then they may indict him. And now, what if that be true, what becomes of that Constitutional provision that a man cannot be tried twice for the same offense? Can you try him here for an offense and eliminate him, and then try him again? Our Constitution says so. It is not a criminal trial. Moreover, our Legislature denominates a civil case—I read you that statute in which it says to proceed as in other civil cases, and to take evidence as in other civil cases.

Mr. Hanger: Where is that statute you read from, the definition?

General Crane: Which statute?

Mr. Hanger: The one you just mentioned.

General Crane: It is in the im-

peachment statute. I will get it in a minute.

The Chair: General Crane?

General Crane: Yes, sir.

The Chair: I want counsel to discuss the last sentence of Section 10, of Article 1, of the Constitution.

General Crane: Section 10, of Article 1. All right, your Honor, I will come back to that—take the whole of it together. Section 10 says that, "In all criminal cases"—"In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury." All right, now, gentlemen on the other side, if this is a criminal case you are before the wrong tribunal; you ought to have an impartial jury and not simply a court. "He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel, or both, shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offense, unless on indictment of a grand jury, excepting cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the Army or Navy, or in the Militia, when in actual service in time of war or public danger." Now, I think I understand the question of the Court. "No person shall be held to answer for a criminal offense, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the Army and Navy." Now, my construction of that article, Mr. President, is that a crime may be made the basis of an impeachment, and wherever a crime is made the basis of an impeachment it is not necessary to have a grand jury to indict him before he can be tried before the Senate. I think that is what it meant to say, that if he is to be tried—charged with a crime itself he must be indicted, but if he is tried for a criminal offense by an impeaching court, then it may try him for that before the court, but

that does not make an impeachment case a criminal case by any manner of means, and the legislative construction of the Constitution, I take it, shows that. Article 6048 says: "The trial"—the impeachment cases—"and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases." They try it as a civil case. Now, the mere fact that a crime may be the basis of it does not make it a criminal case. Mr. President, a man may commit a crime, he may kill another or injure another seriously, he may commit an assault with intent to murder, yet the injured party may sue him for damages in a civil case, and the punishment to be inflicted determines the character of the case. If he is not punished as a criminal, but simply removed from office and left to deal with other matters, it is not a criminal case, but yet he is tried for a crime. If you get a judgment against a man for an unlawful assault on another, the jury assesses a penalty in a way, but it would be a travesty on the English language to call that a criminal case. It is not; it is a civil case. Why, a man may be charged with several crimes as the basis of impeachment, but why call it a criminal case when the only remedy we can invoke is to remove him from office and possibly disqualify him from holding another. The crime is still left open. The criminal is still to be dealt with by the grand jury and a jury, if there be such crime. He is not punished here for that; he is punished here because unfit to hold the office. Precisely. Why, it is not different from this, drunkenness in a public place is a crime. An officer may be indicted for drunkenness in a public place, and your Honor might indict him and remove him; you are not trying him for that, but for disqualification to hold his office, and the grand jury the next day may indict him for drunkenness in a public place and convict him. You are not acting as a criminal court when you remove him from office. Suppose you have a quo warranto proceeding to remove any man from office because of misconduct; you are not sitting as a criminal court in that quo warranto case; you are sitting in an altogether

different capacity, and then if the accused in the removal suit is brought before the grand jury and they indict him, then you sit in the criminal court and have a penalty assessed against him—for what? for the crime that he committed. In the other you simply adjudicated that he was not fit to hold office because of disqualification, and that's all an impeachment case is. An impeachment case when the proponents are successful is simply a judgment of the court that the respondent is unfit to hold that office, that's all. You don't judge the quality of the crime. No punishment can be inflicted except the ones mentioned, you are limited to that, and I take it that the minority in the Senate—the arguments there made were really unanswerable. An impeachment case is not a criminal case; it is a travesty on justice to so denominate it. So I come back to the two points, Mr. President: First, this Texas statute which they invoke, in so far as it protects witnesses, it protects witnesses as contradistinguished from parties, and in the second place, if I am wrong about that, if the parties are to be regarded as witnesses when they come on the witness stand, then it protects them only in criminal cases, and this not being a criminal court it cannot protect them here.

Mr. Hanger: Mr. President.

The Chair: Mr. Hanger.

Mr. Hanger: This proceeding would constitute jeopardy if it were not for this provision of the Constitution: Section 4 of Article 15 says: "A party convicted on impeachment shall also be subject to indictment, trial and punishment according to law." Whether he would or not, however, is not particularly important, but I want to call the President's attention to the fact that this Article 6048, which General Crane read and which says that the trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases, is the statute of this State with reference to the trial in the district court for the removal of certain county and district officers.

General Crane: I stated that.

Mr. Hanger: And has no more to do with this proceeding than if it was with reference to some criminal

offense or the trial of some civil suit. Now, General Crane has overlooked something else. I would like, if the President has the Constitution there before him, that he turn to Section 11 of Article 4. It reads this way: "In all criminal cases, except treason and impeachment, he shall have power"—and still the General says it is absolutely silly to call this a criminal proceeding—"In all criminal cases, except treason and impeachment." With the utmost respect, I cannot understand how after the reading of that—let me read the remainder of it—there is even room for discussion. In addition to that, it is suggested that I read the remainder of that article—I didn't read it any further myself: "The Governor may in all criminal cases, except treason and impeachment—shall have power, after conviction, to grant reprieves, commutations of punishment, and pardons; and, under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the Senate, he may grant pardons in cases of treason; and to this end he may respite a sentence therefor, until the close of the succeeding session of the Legislature; provided, that in all cases of remissions of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the Secretary of State his reasons therefor." "In all criminal cases except treason and impeachment." Now, I call the President's attention and the attention of the members of the Court to the case of the State vs. Hastings, decided by the Supreme Court of Nebraska, and I may be permitted to say that so far as I have been able to find the doctrine there announced has not been disputed or there has been no contrary holding by any of the other courts in this country. I read from the syllabus. It is a very long opinion; I haven't the exact language of the opinion before me, but I feel sure that I am entirely safe in saying that the opinion abundantly bears out the syllabus. "Impeachment is with respect to the production of evidence and quantum of proof necessary to warrant a conviction essentially a criminal prosecution," and so far as I know there has been no contrary holding in this

country. The result is infamy if successful and who can say that it is not a criminal prosecution just as essentially as if it took his property or his liberty from him? Now, General Crane says in addition to that—

General Crane: Let me see that.

Mr. Hanger: All right. (Handing book to General Crane.) He finds a good deal of comfort in the language of this statute here enacted in 1907 and says that the protection is thrown around the witness, that it does not protect the party, and that because the Legislature in its wisdom did not extend that protection any further than to the witness that the party is left outside of the protecting arm of the law on that subject. The Federal statute reads this way: "No testimony given by a witness before either House or before any committee of either House of Congress shall be used as evidence in any criminal proceeding against him in any court."

General Crane: Now, Mr. President, I don't want to interrupt counsel unnecessarily.

Mr. Hanger: You won't disturb me the least bit in the world. Go ahead.

General Crane: That statute makes no mention of the parties and witnesses. It uses "any witness," no matter whether a party or not.

Mr. Hanger: I hope I will not be guilty of any disrespect if I say that is absurdly hypercritical. This statute here says—where is that?—5517

General Crane: You have all the books there under your hand.

Mr. Hanger: Well, I had it a while ago. Here it is. This statute here is so plain I think there cannot be any question about it. "Provided, further, that the testimony given by a witness"—

General Crane: (Interrupting.) Read it all, please.

Mr. Hanger: Well, I am going to. "Provided, that the testimony given"—Now, the testimony that a witness gives before an investigating committee, every different witness, it is, because it is the testimony of the witness that is dealt with, what he says, the language that he speaks, the statements that he makes. "The testimony given by a witness before such investigating committee shall

not be used against him in any criminal action or proceeding." So that it leaves—now, if you desire, I will read what you read before, but I am sure the Chair nor any member of the Court—

General Crane: (Interrupting.) Now, Senator, if you are right—

Mr. Hanger: So that the only question that is left after the reading of this language of the statute is whether it is a criminal proceeding.

General Crane: Now, Senator, if you are right about it then this Court can compel the attendance of the Respondent and can compel him to testify.

Mr. Hanger: This applies to the investigating committee of the House, and if you are right that it is a civil proceeding, you could have put the Governor on the stand as you tried then to do and as you tried on another famous occasion to do, and when the refusal was entered you did not pursue it, and a member of your Board of Managers here refused to permit you to put him on first in the investigation in the House because it was a criminal proceeding. They raised that question in the House.

The Chair: Mr. Hanger, I would like to hear from you on this point: If the Chairman of the House Committee of the Whole correctly ruled that the House could not compel the Respondent here to give testimony against himself, is that article of the statute applicable?

Mr. Hanger: Well, I would not like to discuss it here, not having discussed it there or having been permitted to do so, the correctness of that ruling.

The Chair: I was assuming, if he was correct, that he could not be summoned as a witness and compelled to testify, then is that article of the statute applicable?

Mr. Hanger: Certainly it is applicable, Mr. President—certainly it is applicable, because it is just such an investigation provided for in this statute as was held—it is not material here, if I may say with all respect, whether the ruling there was right or wrong; I think it was right that he was not compelled to answer, because it was in the nature of an investigation of that sort, and it was held that he did not have to testify first. We submit to the Chair—to the Court—

General Crane (Interrupting): Mr.

President, I don't want to unnecessarily consume the time of the Court—

Mr. Hanger (Interrupting): I want to say this—

General Crane: Yes.

Mr. Hanger: The uniform holding by the courts of all the States so far as we have been able to investigate and find is that an impeachment trial is a criminal proceeding and clear outside of the language used by our Constitution, and that is sufficient and abundant, but the Supreme Courts of the various States of the Union hold that it is a criminal proceeding.

General Crane: Mr. President, I won't detain you but just for one moment. Under the Texas rule, in the absence of any statute, I think it would be conceded that we can read his testimony. Now, here is this statute upon which they rely, and I don't think I am so hypercritical as my friend would indicate. It talks about the authority of the committee or any member of it, that they shall have authority to administer oaths to the officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it, and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated, in answer to all pertinent questions propounded by it or under its direction, and to fine or imprison any witness, for his failure or refusal to obey the process served on him by such committee or to answer any such pertinent questions propounded, provided, that such fine shall not exceed a certain sum named and the imprisonment shall not extend beyond the date of the adjournment of the Legislature then in session, provided further, that the testimony given by a witness—not by a party—before such investigating committee shall not be used against him in any criminal action or proceeding nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury. The reason of that rule is that a witness was compelled to come and compelled to testify and compelled to produce his docu-

ments and papers and he was obliged to obey, but a party unless he voluntarily takes the witness stand was not obliged to obey. The only authority given to that committee over the party is to swear him, that's all.

Mr. Hanger: I call the Chair's attention to the fact that we have gone a long ways away from the position taken by the General at the beginning, that under the Swayne case—he arose and read the Swayne case and took the position then that they could read this because of the holding in the Swayne case and the peculiar language of the statute. Now, when we find that the Federal statute is substantially what our statute is here, that it is a criminal proceeding, and that Judge Swayne voluntarily appeared and testified—was sworn and testified voluntarily without being subpoenaed, party though he was, and they held that he could not be compelled to testify, then we find the General taking the position that it is the difference between a party and a witness.

General Crane: No, you are mistaken.

Mr. Hanger: I call the Chair's attention to the difference in his position a few minutes ago and now.

General Crane: Counsel will be fair enough to state here that the Federal statute makes no distinction between parties and witnesses and treats every man who testifies as a witness, but the Texas statute makes a distinct difference between the two.

Mr. Hanger: I undertake to say that abundant authority can be found for the holding; I haven't one at hand now, but if the Chair will give me an opportunity abundant authority can be found in Texas that when a party takes the witness stand he becomes a witness just as any other witness and that there is no distinction on earth in any of the decisions of any court of this or any other State between a witness party or non-party.

General Crane: I grant that as a general rule, but not under this statute.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: A question for information. What is the question that the President must now rule on?

The Chair: The question is on the

admissibility of these letters. I will state that I will rule on that under the state of the record now and reserve the ruling on the other question until it is properly before us. In the present state of the record, the objection to the letters will be sustained. We will look further into the question if the question arises whether he desires to offer the testimony of the Governor.

General Crane: Yes, sir.

The Chair: I want to critically read and compare those two articles.

General Crane: Well, we are in no hurry for a ruling on the other, because we haven't reached it yet, and will occupy all the afternoon on other testimony.

Senator Bee: Do I understand that the question of the admissibility of the Governor's testimony in the House is now before us?

The Chair: No, sir, it is not. It was incidentally before the Court in this way: General Crane stated they expected to prove by offering the testimony of the Governor in the House investigation such facts as would make these letters admissible. That testimony is not offered yet, but discussion of that was invited on the admissibility of that testimony. Proceed, General.

CARL T. WIDEN.

Re-direct Examination
By General Crane.

Q. You were asked about the methods of collections. You say the practice is to settle once a month with the officials; that the American National collects?

A. Yes, sir.

Q. Did you ever know, during the twelve years you have been connected with the bank, any other Governor or Secretary of State or Banking Commissioner who deposited money in your bank to the credit of some other bank out of town?

A. No, sir.

Q. Do you know of any other Governor, or any Secretary of State or Banking Commissioner, who, after the money had been collected and was on deposit in your bank, that they would send it up the country to some country bank?

A. No, sir.

Q. Or to Houston, or to some other bank?

A. No, sir.

Q. This \$250,000 that was on deposit in the American National Bank on the 28th day of May, 1917, to the credit of the Secretary of State, had all been collected, hadn't it?

A. Yes, sir.

Q. It was ready to be remitted, for the first of the month?

A. May I tell you the amount that would ordinarily have been paid into the Treasury on the 10th?

Q. Yes, sir.

A. On May the 1st there was a balance of \$280,871.21, and according to our regular custom we would expect to have paid that amount into the Treasury on the 10th or thereabouts of May.

Q. Or the following month, the 10th of June, wouldn't it be?

A. The amount was there on the 1st of May, that is the April collections and would have been paid in on the 10th of May.

Q. But, wasn't this \$250,000 taken out on May 28th?

A. Yes, sir.

Q. Now, how much of that had been paid in the 10th of the following month?

A. There was no payment made into the State Treasury during the month of May.

Q. There was none paid in the month of May?

A. No, sir.

Q. Well, my question is, it was all collected ready to be remitted to the Treasurer?

A. Yes, sir.

Q. There was no collections necessary to be done?

A. No, sir.

Q. No further supervision of it except to remit it in the ordinary way?

A. Yes, sir.

Q. Then there was nothing left for the Temple State Bank to do by way of service to the State, was there?

A. The items were all collected and it was all ready to be paid in.

Q. That will do.

Re-cross Examination
By Mr. Hanger.

Q. Mr. Widen, don't you know that in May, 1916, that the franchise taxes were not paid in until July?

A. On May 13, 1916, there was a transfer of \$246,000.

Q. What was that, franchise tax, or otherwise, or do you know?

A. That was from the account of John G. McKay.

Q. When was the next one?

A. Well now, I see a debit in June, of course I can't identify these checks, because I don't have them. I see a transfer in June of \$12,500.

Q. And in July another one?

A. In July, that happened to be on July 12, of \$31,000.

Q. Now, Mr. Widen, this is money that was transferred to the Temple State Bank by the American National Bank. Did the American National Bank take any offence that it went out of that?

A. I didn't hear anything about it.

Q. Those accounts have been carried in your bank many years?

A. We have had the Secretary of State's account since Governor Lanham's administration.

Q. A very large amount?

A. At times.

Q. A very large amount in the spring months?

A. Yes, sir.

Q. Very large every year?

A. Every year.

Q. A profitable account?

A. I would consider it as such.

Q. Now, Mr. Widen, if that account had stayed there, had remained there past the 28th of May,—was that the date that it went to Temple?

A. Yes, sir.

Q. If that had remained there until the 10th down to whatever the date was in June, that would have been handled through the clearing house with a check just the same as those other accounts have been handled?

A. We would have expected it to be handled that way.

Q. You would have expected it to be handled that way?

A. Yes, sir.

Q. You would not have paid any cash unless the Treasurer demanded it?

A. No, sir, we do not pay any cash unless it is demanded.

Q. Now, Mr. Widen, you don't know the different—there is nothing, I mean, on your bank books to show the difference between franchise taxes and other moneys received by the State?

A. There is none.

Q. Well, the account as kept in your bank, all those things go in the bank together?

A. Yes, sir.

Q. If they are checked out at different times and separately, that is a matter of bookkeeping in the

Secretary of State's office and not in yours?

A. Yes, sir.

Q. Now, it is not a matter of universal custom, habit and practice, when you have on deposit in your bank, or on hand in your bank \$50,000, \$20,000, or \$10,000, covered by check from an official, State official, State Treasurer, for the State Treasurer to come down and get the money and take it up to the Treasury?

A. No, sir, there is no occasion for it.

Q. I am not talking about whether there is occasion for it, or not, that is not done?

A. That is not a custom.

Q. That is not a custom? So far as you know you have never known of a Treasurer doing that?

A. No, sir.

Q. So far as you know, during the twelve years that you have been here, excepting Sundays and holidays, the Treasury has been open, hasn't it?

A. Yes, sir.

Q. The Treasurer's office has been open?

A. Yes, sir.

Re-direct Examination
By General Crane.

Q. You say the Secretary of State's account, as settled every thirty days, is a valuable account to the bank

A. We considered it as a valuable account.

Q. If it were paid every ninety days it would be more valuable would it not?

A. Yes, sir.

Q. Very much more. That's all. Stand aside.

Re-cross Examination
By Mr. Hanger.

Q. That is more valuable, too, is it not, because here those settlements are made through the clearing house by check without exchange of money. That renders it more valuable, doesn't it?

A. I can't say that it does.

Q. You can't say that it is not, can you?

A. Because we are prepared at all times, upon notice, to pay out the money.

Q. But in view of the fact it is

not the custom to pay out the money that renders it somewhat more valuable?

A. It renders it unnecessary for us to carry more reserve.

Re-direct Examination
By General Crane.

Q. You settled with the Secretary of the State and Treasurer the same as any other banks?

A. Yes, sir.

Q. If you buy up a number of State warrants and you have a lot of money you will have collected for the State Treasury through the clearing house, you simply clear it and send a check on your bank?

A. Yes, sir, signed by the manager of the clearing house.

Q. That's all.

Senator Bee: Mr. President, I would like to ask the witness one question.

Mr. Hanger: We will let him write it and let me ask you this:

By General Crane:

Q. How do you get money,—some of the Senators want to know, how you get money from the bank to the Treasury in the event it should become necessary?

A. From the Treasury?

Q. No, from the bank to the Treasury.

A. How we take it up there?

Q. Yes.

A. We carry up the currency.

Q. Carry up the currency?

A. Yes, sir.

Q. That is done frequently, is it?

A. Very often.

Q. So then all the money that is transmitted to the Treasury is not done by check of the clearing house?

A. No, sir.

Q. You didn't intend to make that impression?

A. No, sir.

Senator Bee: That is the question I intended to ask.

Re-cross Examination
By Mr. Hanger.

Q. In these transactions, the greater percentage of them, however, are handled as clearing house propositions?

A. Yes, sir.

Q. Would your records show which ones were so handled as clearing house propositions and which

ones handled by the payment of the actual cash—would your records show that?

A. No, I will have to make an explanation there: For instance, today the Treasurer has a clearing house check that is for \$200. He will say, send me up the money, I will have to have the money. We get the money in and we will put in a debit account in the clearing house to be offset by the check he got the previous day.

Q. I may not understand, does that make your record show in what percentage it is a clearing house proposition, and in what part it is a cash proposition?

A. Our records would not show.

Q. Would not show, that is what I thought. You say you handled this and settled with the Treasurer as you did with other banks?

A. Yes, sir.

Q. Not with other customers, but with other banks?

A. With other banks.

Q. You say that because he is a member of the clearing house?

A. With other clearing house banks.

Q. He is regarded in that instance as a bank?

A. Yes, sir.

Q. And therefore the great majority of the transactions are simply bookkeeping transactions?

A. Yes, sir.

Q. And no money passes in a great majority of them?

A. Well, except in such instances as he demands it or we demand it.

Q. Well, but in practical effect and practically speaking the great majority of them are bookkeeping transactions?

A. Yes, sir.

Q. That's all.

Re-direct Examination
By General Crane.

Q. Isn't it true, Mr. Widen, that most of the business that the banks do is done in precisely the same way?

A. Yes, sir.

Q. Are not many of your customers' checks paid through the clearing house the same way?

A. I would say the majority of them.

Q. They do not lug the currency around and distribute it, do they?

A. No, sir.

Q. It is done by checks, that is not all of it?

A. No, sir.

Re-cross Examination
By Mr. Hanger.

Q. Let me ask you this: What does that result in, a balance, a constant balance, the Treasury with the bank?

A. No, sir.

Q. Does it ever result in that?

A. Well, it sometimes results in a balance for the Treasury and sometimes for the bank, depending upon which way the money goes.

Q. Sometimes in the red and sometimes he is not?

A. If the money is going into the Treasury he has a credit. If it is going out through period of these large warrants, when these school warrants come in.

Q. When the credit is coming in, how does he pay you?

A. We go up and get the money.

Q. You go up to the Treasurer's office and get the money and put it in the bank?

A. Yes, sir.

Q. A request has come to ask the question: When was the last time that the Treasurer had you bring the money to the Treasury?

A. Well, I don't recall.

Q. How long has it been, was the question that was requested?

A. I don't recall how long it was.

Q. Can you remember when it was?

A. I think it was during this period when so many of the collections were being made, so many tax collections were being made; he sent up there I think in March.

Q. In March?

A. I can't say definitely, I would have to look up my records. It is such an ordinary transaction, I would have to find out when we made up our last big shipment of money.

Q. Will you do that?

A. I can try to get the information for you.

The Chair: Here is a question Senator Bee desires to ask the witness: "I understand the State Treasurer is a member of the Clearing House. What are his duties in connection with the Clearing House?"

A. Well, his duties are—he simply sends a messenger from his office down to the place of clearing

every day and presents there the checks that he has gotten on all the Austin banks. The Austin banks in turn meet there and give that messenger in return the checks or warrants that they have on the State Treasurer, and then the messenger from the State Treasurer or the messenger from the banks, as the case may be, get a check or give a check signed by the Manager of the Clearing House for the amount of the debit.

The Chair: Any further questions?

Mr. Hanger: There is this question suggested: How long has the Treasurer been a member of the Clearing House?

A. That's a matter of record. I would have to look it up.

Q. Well, has it been the entire time you have been connected with the bank?

A. I think he has been a member ever since the Clearing House was organized.

Q. When was that?

A. In 1907, I believe.

Mr. Hanger: Ten years ago. That's all.

General Crane: That's all.

Mr. Hanger: Just a minute.

Re-cross Examination
By Mr. Hanger.

Q. There is a request to ask this question: Has the Treasurer any voice in the management of the Clearing House? Is he a member just like a bank is?

A. I think he is a member just like the United States Treasurer is, just as a matter of courtesy.

Mr. Hanger: That's all.

The Chair: Here is a question—Senator Hopkins propounds this question: On whom is the Clearing House check drawn—that is, who acts as depository of the Clearing House funds?

A. Well, for instance—may I give an illustration? Suppose our bank goes into the Clearing House today with a hundred thousand dollars total; the other banks bring in against us a total checks of fifty thousand dollars. That means that we have in the Clearing House a credit of fifty thousand dollars. It also means that there must be a corresponding debit in the Clearing House against one of the banks whose checks amounted to more than

the checks that they brought, and we will therefore—for instance, suppose the State Treasurer has a less total of checks that day than the amount against him; we would get the check on the State Treasurer.

The Chair: Any further questions, gentlemen?

Senator Hopkins: I would like to ask—a Clearing House check is just a due bill?

A. It's a due bill, yes, sir.

Senator Hopkins: That's all.

Re-direct Examination
By General Crane.

Q. Suppose it is on a bank, it's a check on the bank, isn't it?

A. It amounts to the same.

Q. The bank on which it is drawn pays it at the window like any other check?

A. In cash or exchange.

Q. Yes.

A. Just as the agreement may be. General Crane: That's all.

Re-cross Examination
By Mr. Hanger.

Q. Now, suppose there is five thousand dollars in favor of the Treasurer, where does that go?

A. Well, he gets a check for five thousand dollars.

Q. What does he do with the check?

A. Well, it is his privilege to cash it if he wants to or hold it to the following day, as he prefers.

Q. If he wants to cash it to whom does he present it?—a Senator wants to know.

A. He would present it to the bank it is drawn on.

Mr. Hanger: That's all.

General Crane: That will do.

The Proponents called

T. H. DAVIS,

who, being duly sworn by the Chair, testified as follows:

Direct Examination
By General Crane.

Q. Mr. Davis, you are vice president of the American National Bank, I believe?

A. Yes, sir.

Q. Some testimony has been offered here with respect to three deposits made by Governor Ferguson in currency in that bank, one in Febru-

ary, 1917, and three in April, four in all. Were those deposits made with you or given to you, the cash—the currency?

A. Yes, sir, during the month of April I took in two deposits.

Q. Of what amounts?

A. One of twenty-five thousand and the other of fifteen thousand.

Q. Who delivered them to you?

A. Mr. J. H. Davis, Jr., the Governor's secretary.

Q. What did you do with them, Mr. Davis.

A. I counted the money and turned it over to Receiving Teller James Rogan.

Q. James Rogan. Did you observe the wrappers on the packages?

A. No, sir, I paid no attention to that, General.

Q. Just simply delivered them to Mr. Rogan?

A. Yes, sir.

General Crane: That's all.

Cross Examination.

By Mr. Hanger.

Q. How did you count it, Mr. Davis: by the bills

A. Yes, sir.

Q. Counting the bills?—I don't know how to put the question.

A. Well, of course, it was in—as I remember, in five hundred or a thousand dollar packages, as I recall, and I just counted the bills.

Q. I mean the bills separately?

A. Yes, sir.

Q. You don't remember whether it had any wrappers on it or not?

A. Oh, it was all wrapped—had regular currency wrappers around it.

Q. Are you sure it did?

A. Yes, sir.

Q. Positive of that?

A. Well, there were wrappers around it, yes; I took it to be currency wrappers.

Q. Were they rubber wrappers or paper currency wrappers?

A. Paper wrappers, I think.

Q. Sure of that?

A. Paper wrappers.

Q. You don't know what they were.

A. I paid no attention to it.

Q. Who was the first person you discussed that fact with, about whether it had wrappers or not?

A. Why, I took the money and turned it over to Mr. Rogan, the Re-

ceiving Teller, without any comment whatever, as I recall.

Q. I am not asking you what was said, but who was the person.

A. Mr. Rogan.

Q. When was that: shortly afterwards?

A. I believe on the afternoon of the same day.

Q. When was the next—who was the next person you discussed it with?

A. I don't exactly understand the question.

Q. Who was the next person you discussed that fact with?

A. That the money had been deposited

A. No, about the wrappers?

A. Well, I don't recall that I discussed that—the wrappers—with any one except probably today; General Crane was at the bank at noon.

Q. You have discussed it with no one since talking with Mr. Rogan the afternoon of the day of the deposit and General Crane—those are the only ones?

A. Well, I wouldn't say that, Senator, because—

Q. (Interrupting.) You don't remember?

A. I think Mr. Widen probably said something to me about the wrappers.

Q. Well, anyone else you remember except Mr. Rogan, Mr. Widen and General Crane?

A. Probably some of the officers of the bank.

Q. No one outside of the bank, except those that you remember?

A. No, sir.

Q. Now, those deposits were on different dates, were they not?

A. Yes, sir.

Q. You don't recall about the wrappers on either one of the deposits?

A. No, sir.

Q. You counted the bills in each one of the deposits?

A. Yes, sir.

Q. Verifying the amount

A. Yes, sir.

Q. Were the wrappers afterwards exhibited to you?

A. No, sir.

Q. They were never exhibited to you afterwards?

A. No, sir.

Q. Or shown to you afterwards?

A. No, sir.

Q. You could not say what was on them?

A. No, sir, I could not. Now, General Crane asked me about those two deposits to the account of Governor Ferguson. One of those deposits was by direction of Mr. Davis deposited direct to the credit of the Houston National Exchange Bank and the other one to the Governor's personal credit.

Mr. Hanger: That's all.

Re-direct Examination
By General Crane.

Q. Which one went to the Houston bank, Mr. Davis?

A. Twenty-five thousand was placed to the credit of the Houston National Exchange Bank and fifteen thousand to his credit.

General Crane: That's all.

The Chair: Stand aside.

General Crane: Is Mr. James Rogan here?

Mr. Hanger: Is Mr. Rogan here, Mr. Davis?

The Witness: No, I think not. Mr. Wroe and he and I were summoned together. Mr. Wroe is here.

General Crane: Call Mr. Wroe.
The Proponents called

H. A. WROE,

who, being duly sworn by the Chair, testified as follows:

Direct Examination
By General Crane.

Q. Your name is H. A. Wroe?

A. Yes, sir.

Q. You are also Vice President of the American National Bank of Austin, are you not?

A. Yes, sir.

Q. Do you remember any deposits made in currency by Governor Ferguson or his Private Secretary in the American National Bank during the months of February, 1917, or April?

A. I did not see any made by him.

Q. Well, just state what you know about it?

A. Well, I received one deposit of eleven thousand dollars and one of twenty-five thousand dollars.

Q. How?

A. It was handed to me by Major Littlefield.

Q. By Major Littlefield?

A. Yes, sir.

Q. Had you seen anybody in the

bank with him, or did Major Littlefield bring the money to the bank?

A. He brought the money to me.

Q. Brought the money to you in the bank?

A. Yes, sir.

Q. Was there anybody there representing the Governor?

A. I didn't see anybody.

Q. Was it credited to the Governor on the deposit slips—did you have that done, or did the Major have it done?

A. The Major had it done by me.

Q. The Major had it done by you?

A. Yes, sir.

Q. Did you note anything about the wrappers on the currency, or whether it had any wrappers on it or not?

A. I think all the currency had wrappers on it.

Q. Did you notice what wrappers they were?

A. I noticed one particularly; I don't know what package it was.

Q. What was that?

A. The Alamo National Bank.

Q. That's a San Antonio bank, I believe?

A. Yes, sir.

Q. Did you count the money?

A. I did not.

Q. It had been counted by the Major?

A. I don't know.

Q. Did you turn it over to the Teller?

A. I turned it over to the teller.

Q. Who was the teller to whom you gave it?

A. Mr. Rogan.

Q. Mr. James Rogan?

A. Yes, sir.

Q. Is the deposit of large amounts of currency like that a usual or unusual circumstance?

A. Well, it is unusual, I presume.

Q. It doesn't often happen in your bank?

A. No, sir.

Q. Most of the deposits are made by checks or drafts or some items of credit?

A. Yes, sir.

Q. Are the deposits made in your bank usually made with Major Littlefield, the president of the bank, or with the tellers?

A. With the tellers.

Q. The tellers at the windows are there for that business, aren't they?

A. Yes, sir.

Q. You have receiving tellers and paying tellers?

A. Yes, sir.

Q. The receiving tellers receive cash and enter it on the books and all that?

A. Yes, sir.

Q. Or whatever items they get. (No answer.)

General Crane: That's all.

Cross-Examination

By Mr. Hanger.

Q. What was the date of the two deposits, Mr. Wroe, do you remember?

A. I think it was—I could not tell unless I refer back to the deposit slips.

Q. Well, were they both in February or one in the month of April?

A. I think so; I am not quite sure.

Q. Which—both in February?

A. No, sir, I think they were probably a month apart; I am not right sure.

Q. But some time apart. Do you remember which one was the large one—which was the twenty-five thousand, which was the eleven?

A. I think the twenty-five thousand was the last deposit.

Q. Was the Governor there when those deposits were made?

A. I didn't see the Governor.

Q. What size were the packages—five hundred or a thousand?

A. I never counted them.

Q. Well, you say you noticed one of the wrappers?

A. The top wrapper.

Q. Only one wrapper?

A. Only one.

Q. Are you sure there was a wrapper on the top package?

A. Yes, sir.

Q. Sure of that?

A. Yes, sir.

Q. That was the Alamo National Bank?

A. Yes, sir.

Q. You don't know whether the others had any on them or not?

A. I do not.

General Crane: Talk a little louder.

A. I do not.

Q. Now, which deposit was that: the first one or the last one?

A. I could not say.

Q. Have you no recollection?

A. No, sir.

Q. —about that? Who was the first person you talked to about that—not what you said, but who was the person?

A. I took the money to the receiving teller, Mr. Rogan.

Q. You took it to—

A. I turned the money over to Mr. Rogan, the receiving teller, I didn't count the money.

Q. Well, I say, did you discuss with him the wrapper?

A. I don't think I did, I have no recollection of it.

A. Have you discussed with any one since then the fact of the wrapper being on there?

A. I don't recollect.

Q. Nobody that you remember of?

A. No, sir.

Q. Nobody that you remember that you told that the money had the wrapper on there?

A. No, sir.

Q. Up to the time you got on the witness stand?

A. No, sir.

Q. This is the first time you have been told it?

A. Yes, sir.

Q. Yes. Those packages were handed to you at different times by Major Littlefield?

A. Yes, sir.

Q. Oh, Mr. Wroe, has the Ex-students Association any deposits in that bank?

A. The Ex-students Association?

Q. Any account in your bank?

A. I think they have.

Q. How much is it?

General Crane: I object to that, Mr. President.

Mr. Hanger: I want to show how big it is.

General Crane: I object to that altogether.

Mr. Hanger: To show the interest of the witness.

General Crane: Oh, well, if that is the purpose, answer it, I don't care.

Q. How much is it?

A. I couldn't tell you.

Q. It is a pretty big account, isn't it?

A. I think not.

Mr. Harris: Let him phone down to the bank and find out and tell us.

Q. Will you produce a record showing the checks against it?

A. I don't presume there would be any objection to it.

Q. I am asking if you will give us that?

A. Yes, sir.

Q. Who is the member of the Clearing House from your bank—

does each bank have a member of the Clearing House?

A. No, sir.

Q. A representative, I mean?

A. No, sir.

Q. Different ones represent the bank? Mr. Roberdeau is Vice-President of the Clearing House, yes, and Chester Thrasher is President—Mr. Thrasher, I think is Vice-President. That is what I am trying to get at. Each bank has a representative in the Clearing House?

A. Well, they have an election each year, and they generally pass it around and give each member—

Q. Well, I mean at this time?

A. Mr. Roberdeau is, yes, sir.

Q. Roberdeau? Mr. Thrasher is president of the Citizens Bank and Trust Company, he is president?

A. Yes, sir.

Q. Who is the Austin National Bank's representative?

A. I don't remember now.

Q. Don't they belong to it?

A. They belong to it, yes, sir, but I don't know what officer of the bank.

Q. So any one of the employees—

A. Takes the clearings over to the clearing house.

Q. Takes the clearings over to the clearing house each day?

A. Yes, sir.

Q. When they have the daily meetings?

A. Yes, sir.

Q. That is all.

General Crane: That will do.

(Witness excused.)

General Crane: Call Mr. Rogan, Mr. Sergeant-at-Arms, please.

Senator Lattimore: Mr. President, I move that we recess for five minutes. We have worked pretty hard for two hours.

The Chair: The Senator from Tarrant moves that the Court take a recess of five minutes. Those in favor of the motion indicate by saying "Aye," those opposed, "No."

(The motion of the Senator from Tarrant to take a recess of five minutes prevailed, and it was so ordered.)

(The Senate sitting as a Court of Impeachment resumed proceedings at 4:20 p. m., as follows, to wit):

The Chair: The Court will come to order. Let the members of the Court and all visitors be in order.

Thereupon

JAMES S. ROGAN,

a witness summoned in this case, presented himself at the bar, and was administered the following oath by the Chair:

"You do solemnly swear that the testimony you shall give in the hearing of impeachment charges against James E. Ferguson, Governor, shall be the truth, the whole truth, and nothing but the truth, so help you God?"

Now, the rule is invoked in this case, Mr. Rogan, by which is meant that you must not hear any one testify and not discuss this case with any one except with counsel, and then not in the presence of any other witness.

General Crane: Mr. Rogan, come around, please.

Thereupon

JAMES S. ROGAN

was called by the Proponents, and having been previously sworn, now in answer to questions propounded, testified as follows, to wit:

Direct Examination

By General Crane.

Q. Mr. Rogan, you were sworn?

A. Yes, sir.

Q. Mr. Rogan, I believe you are a teller of the American National Bank?

A. Yes, sir.

Q. Well, wait until they get seated. (Referring to confusion in the chamber.) How long have you been a teller in the American National Bank of Austin?

A. About four and a half years.

Q. You were there, then, in February and April, 1917?

A. I was.

Q. Do you remember handling any deposits of currency made for and in behalf of Governor Ferguson in the American National Bank during that period?

A. I do.

Q. When was the first one?

A. In February.

Q. February?

A. 1917.

Q. When were the others?

A. The following month—March, I believe, two in March, and one in April.

Q. Were not the others all in April?

A. No, sir.

Q. Well, in any event, they were in currency?

A. Yes, sir.

Q. Have you the memorandum showing the exact dates?

A. Yes, sir. (Producing paper.) Yes, they were all in April following.

Q. That is what I thought. How many deposits, then, were there

A. Four that I have a record of.

Q. Four? What was the amount of the first?

A. \$11,000.

Q. The others, each?

A. \$25,000, April 12th; \$25,000, April 13th; \$15,000, April 25th.

Q. Making a total—?

A. \$76,000.

Q. And then did you handle a deposit of \$25,000 that was made to the credit of the Houston National Exchange Bank?

A. Yes, sir.

Q. That makes \$76,000 all told. What date was that \$25,000—

A. \$71,000 all told.

Q. \$71,000 all told? Are you sure of that?

A. No, it is \$76,000—two \$25,000, yes.

Q. Two twenty-five, one of fifteen?

A. And one of eleven.

Q. And one of eleven?

A. Yes, sir.

Q. \$76,000, yes. Did you notice the wrappers in which that money came to the bank?

A. Not all of them, no, sir.

Q. Well, how many of them, how many of the deposits did you note the wrappers on?

A. I noted the wrappers on some of the deposits, I don't recall which special deposits, what specific deposits they were.

Q. Well, how many of the deposits did you notice the wrappers on?

A. Two at least.

Q. What wrappers were on them?

A. Do you mean what bank wrappers?

Q. Yes, sir.

A. Alamo National Bank of San Antonio, I recall distinctly.

Q. Yes? Any other?

A. Probably the Federal Reserve Bank of Dallas.

Q. The Federal Reserve at Dallas?

A. Yes, sir. Probably some Houston bank wrappers, but I wouldn't vouch for it, that is just my remembrance.

Q. Your impression is, or your recollection is that there were one or two Houston bank wrappers, or more?

A. Yes, sir.

Q. Yes. What bank

A. I don't recall.

Q. You do not recall?

A. No, sir.

Q. That is all.

Cross-Examination

By Mr. Hanger.

Q. Mr. Rogan—

A. Yes, sir.

Q. Do you recall that—or on two of those deposits you saw the wrappers, saw wrappers in two of them—in two of them you saw the wrappers?

A. Yes, sir.

Q. How many wrappers—more than one wrapper in each?

A. Yes, sir; currency comes in about fifty bills, it is customary to—

Q. Well, I know, but do you recall that it was all in wrappers, or that you just noticed a wrapper or two in each—is that what you mean?

A. Yes, sir.

Q. That is what you mean?

A. Yes, sir.

Q. You saw a wrapper or two in each one of those two deposits, bundles or packages of money.

A. Well, you understand that several packages were wrapped, but I only recall about two.

Q. That is what I say, yes?

A. Yes.

Q. You only recall one or two that you noticed particularly enough to see what was on it?

A. Well, there might have been eight or ten packages.

Q. Oh, yes, there might have been eight or ten packages wrapped, but you only recall one or two in each?

A. Well, I can recall six or eight possibly in one deposit.

Q. In one deposit?

A. Yes, sir.

Q. Was that the first one?

A. No, I think the second—I couldn't say.

Q. You are not certain about which one that was?

A. No, sir.
Q. But in one of them you recall there were more than in the others?

A. Yes, sir.

Q. The first one that you remember, there were one or two wrappers, and the other one seven or eight?

A. Yes, sir.

Q. Now, all you remember directly and distinctly was, the Alamo National Bank?

A. Yes, sir.

Q. You think you saw the Reserve Bank at Dallas wrapper?

A. Yes, sir.

Q. And you think you saw one of a Houston bank?

A. Houston bank.

Q. You do not know what bank it was at Houston?

A. No, sir.

Q. You do not remember that definitely enough to state?

A. No, sir.

Q. You do not recall either, I imagine, from your statement, what the size of the packages were, whether it was five hundred—the amounts, I mean?

A. The amounts?

Q. You would not remember that, I presume?

A. Well, they were different sizes.

Q. Different sizes? Was the money counted when it came to you, as I understand it, or did you verify it afterwards?

A. I verified it afterwards as it came to me.

Q. It had already been counted before—or do you know?

A. I would say that it had.

Q. Had slips been made out?

A. It had, yes, sir.

Q. Now, it was handed to you by whom?

A. The officers in the bank.

Q. Do you remember these officers?

A. Two deposits were by Mr. Wroe, and two by Mr. Davis.

Q. Two by Mr. Wroe, and two by Mr.—

A. T. H. Davis.

Q. Tom Davis?

A. Both Vice Presidents of the bank.

Q. Both Vice Presidents of the bank?

A. Yes, sir.

Q. Their offices are in front?

A. Yes, sir.

Q. And they handed it to you through the window, or did they come around behind the railing?

A. They came around on the inside.

Q. Around through the back?

A. Yes, sir.

Q. Each time?

A. Yes, sir.

Q. Now, where is Mr. Widen's desk from yours?

A. Adjoins it on the left.

Q. That is, on your left, would be towards the rear of the bank?

A. Yes, sir, and farthest away from the majority of the officers.

Q. I think that is all.

Re-direct Examination
By General Crane.

Q. How large a package would \$25,000 be, as delivered to you, how large a package is it—these various packages?

A. Well, it was in large denominations.

Q. Well, but I mean the \$25,000 delivered to you, what is the size of the packages all told, how large a bulk would all of them be that made the \$25,000?

A. I imagine it would not be over that high (indicating).

Q. Well, now, how many—in inches?

A. About six or seven inches.

Q. Six or seven inches high?

A. Yes, sir.

Q. How wide, just the width of one bill?

A. The width of the currency.

Q. Sir?

A. The width of the currency.

Q. The width of one bill of currency?

A. Yes, sir.

Q. And, of course, the length of it?

A. The width of the currency and the length of the currency.

Q. Yes, sir. That is all.

Re-cross Examination
By Mr. Hanger.

Q. The height of it would depend on the size and number of the bills?

A. Yes, sir, absolutely.

Q. Yes, the more bills there were of large denominations, the less—

A. The smaller the package.

Q. —the smaller the package? That is all.

Re-direct Examination
By General Crane

Q. But I asked you the size of the particular package without reference to the size of the bills. Did

you give me the size of the package you got?

A. The size of the particular package, yes, sir.

Q. The size of the particular package, yes, sir. That is all.

Senator Hopkins: A question, Mr. President, please.

The Chair: The Senator from Denton desires to send up a question.

Mr. Hanger: While the Senator is writing the question:

Re-cross Examination

By Mr. Hanger.

Q. Could you recall if there were any other wrappers on any of this money?

A. No, sir.

Q. Any of any Waco bank?

A. No, sir, I don't recall that.

Q. You do not recall that, would not say whether there was or not?

A. No, sir, I wouldn't say whether there was, or not.

Q. You would not say whether there was or not. Any of the First National Bank of Fort Worth?

A. No, sir. I don't recall that. But you must understand that a lot of banks verify currency taken in, using the wrapper of the other banks.

Q. Oh, yes, I am not talking about that, I am not talking about the amount, I am talking about the wrappers that you saw there. You say that they were not on there, the ones I mentioned?

A. No.

Q. You would not say. Oh, I didn't catch your point, you say there are a lot of banks that do what? Judge Martin called my attention to your remarks?

A. As I say, there is a lot of currency in shipments to banks, they take the count of other banks, don't verify it.

Q. And while your currency came to you with a certain wrapper on it,—

A. It is no sign that it came from that bank.

Q. It is no sign that it came from that bank?

A. No, sir.

Q. It may have come from any other bank, and put in the bank where the wrapper is—

A. Yes, sir.

Q. —but has been verified by an intervening bank?

A. Yes, sir.

Q. May have passed through a half-dozen others?

The Chair: Here is a question: What were the denominations of the bills? By Hudspeth.

Q. Did you see them?

A. Yes, sir. The denominations ran from fifties to hundreds, five hundreds, thousands, and possibly I had five thousand-dollar bills, I wouldn't vouch for the \$5000 bills; I know I had several thousands and five hundreds.

The Chair: Another question by Senator Hopkins (reading): Please specify if you can the dates and amounts of each deposit, and the kind of wrapper on each, respectively?

A. Well, as I said before, I cannot state exactly in which deposit these wrappers were contained, or the specific dates; I remember the \$11,000 on February 23rd—I wouldn't vouch for them—on April 12th, the \$25,000 that was handed to me had the Alamo National Bank wrappers on it.

Senator Hopkins: What date?

A. April 12th; but I wouldn't vouch for the other package.

Q. (By Mr. Hanger): You mean you would not be certain?

A. No, sir.

Q. About any wrappers on any deposit except the one of April 12th?

A. No, sir.

Q. And you would not be certain about any wrapper except of the Alamo National Bank, that you saw in them?

A. Yes, sir.

Q. The others are just an impression of yours?

A. Recollections.

Q. Yes, sir.

The Chair: Any further questions, gentlemen?

Mr. Hanger: That is all, Mr. Rogan.

The Chair: Stand aside, Mr. Rogan.

(Witness excused.)

The Chair: The next witness will please be called.

General Crane: Call Curtis Hancock, Mr. Sergeant.

Senator Bee: He is in here.

Thereupon the Proponents called

CURTIS HANCOCK,

who had been previously sworn un-

der the rule, and who now, in answer to questions propounded, testified as follows:

Direct Examination
By General Crane.

Q. Mr. Hancock, you are the Chairman of the Good Roads Commission recently organized under the Texas statutes, I believe?

A. State Highway Commission, yes, sir.

Q. State Highway Commission, yes, sir—thank you for the correction. How long have you been in office?

A. Since June 4, 1917.

Q. Speak a little louder, please?

A. Since June 4, 1917.

Q. Your office keeps you collecting, or you do collect considerable sums of money, do you not?

A. Yes, sir.

Q. Did Governor Ferguson have any interview with you soon after your induction into office in respect to collections of money for your department through the Temple State Bank?

A. Yes—in a way.

Q. Well, just state where it was, and what was said by him.

A. Sometime after we were appointed and after the money commenced coming in pretty heavily, and it was accumulating in the department, Governor Ferguson sent for me and I went down to see him, and he and I were alone in the office, and he asked me about the collections in the department, and how the department was getting along, and what I was doing with the funds; and I told him that the money was accumulating very rapidly, and that we were having some difficulty in getting it cleared, and he asked me what I was—

Q. You mean by "cleared," getting collected, the checks?

A. Getting it collected in checks, and he asked me what I was doing with the money, and I told him that I was getting it cleared through the Citizens State Bank & Trust Company. He reminded me of the fact that the law specified that I should deposit that in the State Highway Fund as collected, and I told him we were passing it through clearance, in order to get it collected, before we could pass it into the Highway Fund; that—oh, I don't remember the ex-

act words we used—but the money was piling up considerably, and he asked me if it was not a fact that that was quite a considerable fund to be left—to be cleared through one bank. I told him yes, but it was quite an accommodation to the Highway Department to have this money so cleared, because the—Mr. Thrasher, who is the president of the bank, in company with the State Treasurer, had come up there and had—the State Treasurer had suggested that this money be cleared before we turned it into the Highway fund, and that Mr. Thrasher had very kindly considered—or consented to furnish us additional help, to get that money cleared, and that on—that he would send two or three clerks at times up there to help us to get all of this paper in the bank, and we considered it an accommodation, and a favor to us to assist us in that matter; and in that connection the Governor suggested that the Temple State Bank would be glad to assist us in the same manner. And that was about all that was suggested along that line that I recall, simply as—

Q. Now, in order to refresh your recollection,—you testified before the House Committee, didn't you?

A. Yes, sir.

Q. And isn't this the statement that you there attributed to the Governor: You, after detailing a conversation that was had before, you said, "And that is what I told the Governor, too, and he says then, 'That will be quite a considerable fund that you will have, and since you are putting it in a bank to clear it, wouldn't it be better for you to distribute that money out? You can put some of it in the Temple State Bank?'"

A. That was practically what was said.

Q. Yes?

A. And other banks had offered their services, too.

Q. Yes, other banks had offered their services like he had offered his?

A. Yes, sir.

Q. Yes. Now, you have on that Highway Commission, you have on that a practical banker, haven't you, one of the Commissioners?

A. Yes, sir, Mr. McLean.

Q. Mr. McLean. And then you have on the Commission also an ex-

cellent business man in the person of Mr. Odell, of Bosque County, haven't you

A. A very good business man, I so regard him, yes.

Q. Yes. Temple is about seventy-three miles north of Austin, isn't it?

A. Oh, that is a geographical question—I don't—I suppose about that, yes—I suppose it is about that distance.

Q. Well, there are several banks in Austin, aside from the Citizens Bank and Trust Company, that could help you collect the money, aren't there?

A. Yes, indeed.

Q. Yes. That is all.

Cross-Examination
By Mr. Hanger.

Q. But, Mr. Hancock, you understood that suggestion to be simply an offer to help the Commission make its collections?

A. Absolutely, Senator Hanger; and I so regard it today.

Q. The Governor called your attention to the fact that the Highway Commission Law itself contained a specific provision that upon the collection of moneys provided for in that bill, they should immediately be deposited in the Highway Fund in the Treasury?

A. And—yes, sir, he did, and I gave him my reasons why it could not be deposited in the Highway Fund as—because of the fact that it was in paper, and that I had to have it collected, and the request had been made from the Treasurer that it be gotten into money first.

Q. Well, didn't the Treasurer tell you when he came to you and made the request to clear through the Citizens Bank and Trust Company, that he was a member of the Clearing House Association?

A. That the Citizens Bank and Trust Company—

Q. No, that the Treasurer was? He did not tell you that then, did he?

A. Well, Senator, if he did, it did not impress me, because I didn't know it.

Q. Well, he did not say anything about it, did he?

A. I don't recall his telling me that.

Q. He came with Mr. Chester

Thrasher, the president of the Citizens Bank and Trust Company, and requested you to clear through that bank?

A. Yes, sir.

Q. Not telling you that he was a member of the Clearing House?

A. I didn't know it.

Q. And you didn't know at the time you made objection to turning this into the Treasury at once, that the State Treasurer himself was a member of the Clearing House Association of Austin?

A. I did not.

Q. And upon his recommendation, and thinking that that was the simplest, the easiest and most economical way to collect your money, and thinking that you were getting it into the Highway Fund the quickest and best way, why, you cleared through the Citizens Bank & Trust Company?

A. After I had made investigations; I didn't know that it was the custom in other State institutions. State departments, that that was the method of—

Q. Of clearing?

A. Of clearing, yes, sir.

Q. Yes, sir. You continued to clear through the Citizens Bank & Trust Company?

A. Yes, sir.

Q. You did not clear, and have not cleared through the Temple State Bank?

A. Never have.

Q. That is all.

Re-direct Examination
By General Crane.

Q. Did the Governor recommend to you any bank in Bastrop, or San Marcos, or Georgetown, or Taylor, to help you clear?

A. I have told you all of it.

Q. No, just answer that question, please?

A. No, he did not.

Q. Did he recommend any bank in Bastrop, or San Marcos, or Georgetown, or Taylor, or any of the other surrounding towns to help you clear?

A. No, General, he did not.

Q. Didn't you take the matter up with your associates, and didn't they turn it down pretty hard?

A. No, sir. I took it—your question is capable of division.

Q. All right.

A. I took the matter up with my associates, and we discussed the matter together, and we did decide that

that was impracticable and never considered it any further, and never said anything more to the Governor about it.

Q. Why was it impracticable?

A. Well, for the reason that it was more convenient to clear through an Austin bank here, and I didn't consider the proposition of clearing through more than one bank here.

Q. Yes?

A. When we had letters, asking us to clear through other banks.

Q. Well, it was impracticable because you would have to send the paper, after it came to you, you would have to send it up to Temple, wouldn't you?

A. Yes; and I wanted to get that money into the State Highway Fund as quick as possible.

Q. And, therefore, you deposited it in a bank that was most convenient?

A. Yes, sir. And I have overdrawn at the Citizens Bank & Trust Company as much as \$17,000, so the bank officials down there advised me, in my efforts to get that stuff into the Highway Fund as quick as possible.

Q. Well, I don't blame you for staying with it, that is the bank I want to do business with?

A. Well, they have very kindly done that; and a lot of this paper being New York paper, they sent it up there and they didn't get it back in time—

Q. (Interrupting). Yes, that is all. Mr. Hanger: That is all.

(Witness excused.)

The Chair: The next witness, gentlemen.

General Crane: We haven't any other witness, Mr. President, that we can even finish or make a good beginning with this evening.

Senator Bee: Mr. President.

The Chair: The Senator from Bexar.

Senator Bee: I move that the Court do now adjourn until 10 o'clock tomorrow morning.

The Chair: The Senator from Bexar moves that the Court do now adjourn until 10 o'clock tomorrow morning. Those in favor of the motion, signify by saying "Aye;" those opposed, "No." The motion prevails, and the Court will therefore adjourn to reconvene tomorrow morning at 10 o'clock.

In the Senate.

President Pro Tem. Dean in the chair at 4:45 o'clock p. m.

Bills and Resolutions.

(By unanimous consent.)

By Senators Page and Caldwell: S. B. No. 7, A bill to be entitled "An Act to prevent the introduction into the State of Texas, of the destructive cotton pest, *Pectinophera gossypiella* Saund, hereinafter referred to as the pink boll worm, and to control and eradicate such insect pest in the event its presence in this State is discovered; creating a zone along the southern and southwestern boundary of the State from which cotton and cotton products may not be transported; providing for the inspection of fields of cotton and for the inspection and general control of cotton produced in an inspection zone; and to provide for the quarantine and control of any territory within the State within which the pink boll worm may be found; providing for an appropriation and creating an emergency."

Read first time and referred to Committee on Criminal Jurisprudence.

Simple Resolution No. 10.

Resolved that the number of Journals to be furnished daily be increased from 1,600 to 2,000.

CALDWELL.

This resolution was read and adopted.

Message from the House.

Hall of the House of Representatives, Austin, Texas, Sept. 5, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bills:

S. B. No. 4, An Act making appropriation of the sum of twenty-five thousand (\$25,000.00) dollars, or so much thereof as may be necessary, to pay the contingent expenses of the Third Called Session of the Thirty-fifth Legislature of the State of Texas, convened August 31st,

1917, by the proclamation of the Acting Governor, providing how accounts may be approved and declaring emergency.

S. B. No. 5, An Act appropriating the sum of sixty-five thousand (\$65,000.00) dollars, or so much thereof as may be necessary, out of the general revenue not otherwise appropriated, to pay the mileage and per diem of members and the salary and per diem of officers and employees of the Third Called Session of the Thirty-fifth Legislature of the State of Texas, providing how accounts may be approved, and declaring an emergency.

The House has adopted Senate Concurrent Resolution No. 1, providing that the joint rules of the Second Called Session of the Thirty-fifth Legislature be adopted as the joint rules of the Third Called Session.

Respectfully,
ED GRAHAM,
Acting Chief Clerk, House of Representatives.

Adjournment.

At 4:50 o'clock p. m. Senator Clark moved that the Senate adjourn until 9:30 o'clock tomorrow. The motion prevailed.

APPENDIX.

Committee Reports.

Committee Room,
Austin, Texas, Sept. 5, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 1, A bill to be entitled "An Act to amend Title 37, Chapter 6, of the Revised Civil Statutes of the State of Texas by adding thereto Article 1869a, and to repeal all laws in conflict therewith, by providing that a defendant who is in the service of the United States either as a sailor or a soldier shall not be required to answer to the merits of a demand sued upon during the time he is actively engaged as either a sailor or a soldier in the war between the United States and Germany, and providing that he shall be required

to answer to the merits of such suit within ninety days from the date of the signing of a treaty of peace between the United States and Germany, and declaring an emergency."

Have had the same under consideration and beg to report the same back to the Senate, with the recommendation that it do pass and be not printed, but be printed in the Journal.

BAILEY, Chairman.

By Henderson
and Hopkins.

S. B. No. 1.

A BILL To be entitled

An Act to amend Title 37, Chapter 6 of the Revised Civil Statutes of the State of Texas by adding thereto Article 1868a, and to repeal all laws in conflict herewith, by providing that a defendant who is in the service of the United States either as a sailor or a soldier shall not be required to answer to the merits of a demand sued upon during the time he is actively engaged as either a sailor or a soldier in the war between the United States and Germany, and providing that he shall be required to answer to the merits of such suit within ninety days from the date of the signing of a treaty of peace between the United States and Germany, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. That Title 37, Chapter 6, of the Revised Civil Statutes of the State of Texas of 1911 be amended by adding thereto after Article 1868, another article to be known as Article 1868a which shall read as follows:

Article 1868a. If the citation issued be served upon a defendant after he is an enlisted sailor or soldier of the United States, he shall not be required to answer to the merits of the demand during the time he is actively engaged as a sailor or a soldier in the war between the United States and Germany; provided that he shall be required to make such answer within a period of ninety days from the signing of a treaty of peace between the United States and Germany or after being discharged from service, provided

that the date and place of enlistment of the defendant, and the name of the command in which he is serving, shall be proved by sworn answer or otherwise to the court within ninety days from the date of service, and in either of such events, the cause shall remain upon the docket during the period of the war, unless the defendant shall agree by written answer that the cause may be taken up and disposed of sooner.

Section 2. The fact that many citizens of this State have entered and are about to enter the armed forces of the United States and have not the time in which to arrange all business matters and to provide for the settlement of all debts, created an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and the same is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Committee Room,

Austin, Texas, Sept. 5, 1917.

Hon. W. L. Dean, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

S. B. No. 2, A bill to be entitled "An Act providing that in cases of sales of real property of soldiers or sailors serving in the armies or navies of the United States who are in war with Germany, by virtue of deeds of trust or mortgages where such sales are made without foreclosure suits, that before the execution of any conveyance or delivery of the property there shall first be filed a suit for the confirmation of the sales and for authority to make conveyance and delivery of the property, declaring how service shall be had in such suits and the law applicable thereto, and providing for confirmation of such sales, and declaring an emergency,"

Have had the same under consideration, and beg leave to report the same back to the Senate, with the recommendation that it do pass and be not printed, but printed in the Journal.

BAILEY, Chairman.

By Henderson
and Hopkins.

S. B. No. 2.

A BILL

To be entitled

An Act providing that in cases of sales of real property of soldiers and sailors serving in the armies or navies of the United States who are in war with Germany, by virtue of deeds of trust or mortgages where such sales are made without foreclosure suits, that before the execution of any conveyance or delivery of the property there shall first be filed a suit for the confirmation of the sales and for authority to make conveyance and delivery of the property, declaring how service shall be had in such suits and the law applicable thereto, and providing for confirmation of such sales, and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Section 1. In all cases of sales of real property of soldiers or sailors serving in the armies or navies of the United States during the continuance of the war with Germany, under and by virtue of deeds of trust or of mortgages where such sales are made without foreclosure suits, before the execution of any conveyance by reason thereof or the delivery of the property, or before such property is taken possession of, there shall first be filed in a court of competent jurisdiction a suit for the confirmation of such sale and for authority to make conveyance of and delivery of the property; in such suits service shall be had on any soldier or sailor as is provided by law in such cases, and such suit shall be subject to all laws of this State applicable; on the first trial of the case if the court finds that it is proper and lawful to confirm such sale he shall do so and order a conveyance and delivery of the property, and all sales not made in compliance with this Act and other Acts on the subject shall be null and void.

Sec. 2. The fact that many thousands of citizens of the State of Texas have entered the army for the purpose of performing their duty as soldiers on behalf of their country in the war with Germany, and will therefor be unable to protect themselves and their obligations in the usual manner contemplated when

such obligations were created, and the fact that this is a Called Session of the Legislature which must end within a few days, creates an emergency and an imperative public necessity which requires that the constitutional rule providing that bills shall be read on three several days shall be suspended, and said rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

FIFTH DAY.

Senate Chamber,
Austin, Texas,

Thursday, September 6, 1917.

The Senate met at 9:30 o'clock a. m., pursuant to adjournment, and was called to order by President Pro Tem. Dean.

The roll was called, a quorum being present, the following Senators answering to their names:

Alderdice.	Hudspeth.
Bailey.	Johnson of Hall.
Bee.	Johnston of Harris.
Buchanan of Bell.	Lattimore.
Buchanan of Scurry.	McCollum.
Caldwell.	McNealus.
Clark.	Page.
Collins.	Parr.
Dayton.	Robbins.
Dean.	Smith.
Decherd.	Strickland.
Floyd.	Suiter.
Harley.	Westbrook.
Henderson.	Woodward.
Hopkins.	

Absent.

Hall.

Absent—Excused.

Gibson.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Alderdice.

Bills Signed.

The Chair (President Pro Tem. Dean) signed, in the presence of the Senate, after their captions had been read, the following bills:

S. B. No. 4, An Act making appropriation of the sum of twenty-five thousand (\$25,000.00) dollars, or so much thereof as may be neces-

sary, to pay the contingent expenses of the Third Called Session of the Thirty-fifth Legislature of the State of Texas, convened August 31, 1917, by the proclamation of the Acting Governor, providing how accounts may be approved, and declaring an emergency.

S. B. No. 5, An Act appropriating the sum of sixty-five thousand (\$65,000.00) dollars, or so much thereof as may be necessary, out of the general revenue not otherwise appropriated, to pay the mileage and per diem of members and the salary and per diem of officers and employes of the Third Called Session of the Thirty-fifth Legislature of the State of Texas, providing how accounts may be approved, and declaring an emergency.

S. C. R. No. 1, Providing that the joint rules of the Second Called Session of the Thirty-fifth Legislature be adopted as the joint rules of the Third Called Session.

Petitions and Memorials.

There were none today.

Committee Reports.

See Appendix.

Bills and Resolutions.

By Senator Johnston of Harris:

S. B. No. 8, A Bill to be entitled "An Act to provide for the creation of home guards under the direction of the sheriff of the county; providing for the regulation of such home guard and granting the right to counties, cities and towns to appropriate money to provide arms and ammunition for such home guard, and declaring an emergency."

Read first time and referred to Committee on Military Affairs.

Messages from the Governor.

Here Mr. S. Raymond Brooks appeared at the bar of the Senate with several messages from the Governor.

The Chair directed the Secretary to read the messages, which were as follows: